

T O W N O F M I L F O R D

N E W H A M P S H I R E

Z O N I N G O R D I N A N C E

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ARTICLE I: INTRODUCTION

1.010 PURPOSE

The regulations set down in this Ordinance are for the purpose of promoting the public health, safety, morals, general welfare and civil rights of the inhabitants of the Town of Milford as provided by Title 64 of the NH RSA, Chapters 672-677 inclusive, and as such may be amended from time to time. (1986)

1.020 AUTHORIZATION

1.021 The Planning Board is hereby authorized to make such textual revisions as may be necessary and appropriate to correctly restate statutory citations throughout the remainder of the ordinance so as to achieve consistency with the purpose and authority, provided that such changes result in no contradictions within the ordinance or with state law, and further provided that no substantive changes shall occur as a result of any such correction. (1985)

1.022 The Planning Board has the authority to assign such section numbers to the Zoning Ordinance as it may deem appropriate provided that no substantive change to the ordinance shall occur as a result of this renumbering. (1985)

1.030 AMENDMENTS

This Ordinance may be amended by a majority vote of any legally constituted Town vote when such amendment has received public notices and hearings in accordance with the procedure established in Chapter 31, NH RSA, 1955 as amended.

1.040 EFFECTIVE DATE

This Ordinance shall take effect immediately upon its passage.

1.050 OTHER REGULATIONS, ORDINANCES AND STATUTES

In addition to complying with the regulations established herein, the applicant shall comply with all other applicable regulations, ordinances and statutes of the Town, the State of New Hampshire, and the United States Government, particularly but not limited to the Zoning Ordinance, Open Space and Conservation Zoning District, Wetland Conservation District, Flood Plain Management Ordinance, Subdivision Regulations, Road Specifications, Non-Residential Site Plan Review Regulations, Building Codes and Permits, and the State of New Hampshire Statutes and Regulations relating to land sales and pollution.

1.060 SEVERABILITY

If any section, clause, provision, portion or phrase of this Ordinance shall be held to be invalid or unconstitutional by any court of competent jurisdiction, such holding shall not affect, impair or invalidate any other section, clause, provision, portion or phrase of this Ordinance.

ARTICLE II: GENERAL PROVISIONS

2.010 LOT OF RECORD

Lot of record shall be considered to meet the minimum lot size and frontage requirements of the Ordinance prior to the adoption of the Zoning Ordinance (3/11/69) as long as the lot of record has fifteen (15) feet of frontage on a principal route of access as defined in Article IV, Definitions. (1999)

2.020 NON-CONFORMING USES

Uses of land and buildings in existence at the time of passage of this Ordinance may be continued although such use does not conform to the provisions of this Ordinance.

2.030 NON-CONFORMING USE AND STRUCTURE (2001)

2.031 INTENT: The intent of this section is to allow for the lawful continuance of non-conforming uses, and/or structures and to allow a certain reasonable level of alteration, expansion or change that will not change the nature of the use and unduly impact the neighborhood.

- A. Continuance: A non-conforming use may be continued, although such use does not conform to the current provisions of this Ordinance.
- B. Discontinued use: Whenever a non-conforming use has been discontinued for more than one (1) year for any reason, such non-conforming use shall not thereafter be reestablished, and the future use of the property shall be in conformity with the provisions of this Ordinance.
- C. Alterations: Alteration, expansion or change of a non-conforming use or structure shall only be permitted by Special Exception by the Zoning Board of Adjustment if it finds that:
 - 1. The proposed alteration, expansion or change will not change the nature of the original use; and
 - 2. The proposed alteration, expansion or change would involve no substantially different effect on the neighborhood. (1999)

2.040 PUBLIC NUISANCE

No business, commercial or industrial use shall be permitted which could cause any undue hazard to health or safety or which is offensive to the public because of noise, vibration, noxious odor, smoke or other similar reason. (1984)

2.050 USES/STRUCTURES NOT PERMITTED

Any uses of land and/or structures not specifically included in each zoning district as either acceptable or acceptable by special exception shall be considered as not permitted within that zoning district. (1997)

2.060 EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS (2002)

2.061 When a lot or other division of land, or structure thereupon, is discovered to be in violation of a physical layout or dimensional requirement imposed by the Town of Milford Zoning Ordinance, enacted pursuant to NH RSA 674:16, the Zoning Board of Adjustment shall, upon application by and with the burden of proof on the property owner, grant an equitable waiver from the requirement, if and only if the Board makes all of the following findings:

- A. That the violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed, or until after a lot or other division of land in violation had been subdivided by conveyance to bona fide purchase for value;

- B. That the violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith measurement or calculation made by an owner or owner's agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority;
- C. That the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property; and
- D. That due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected.

2.062 Waivers shall be granted under this section only from physical layout, mathematical or dimensional requirements, and not from use restrictions. An equitable waiver granted under this section shall not be construed as a nonconforming use, and shall not exempt future use, construction, reconstruction, or additions on the property from full compliance with the ordinance. This section shall not be construed to alter the principle that owners of land are bound by constructive knowledge of all applicable requirements. This section shall not be construed to impose upon Town officials any duty to guarantee the correctness of plans reviewed by them or property inspected by them.

ARTICLE III: ZONING MAP - ZONING DISTRICT CHANGES

3.010 DISTRICTS

For the purpose of this Ordinance, the Town of Milford is hereby divided into districts located and bounded as shown on a map entitled "1997 Official Zoning Map, Town of Milford, New Hampshire", copies of which are on file and may be obtained in the Town offices. The official zoning map, with all accompanying explanatory material, is hereby made a part of this Ordinance. The official zoning map shall be revised by the Planning Board to incorporate such amendments as may be made by Town vote. This official zoning map shall be the final authority as to the current zoning status of land in the Town."

REZONING OF THE FOLLOWING LOTS:

1. Rezone the following parcels on Elm St. from Industrial to ICI (Integrated Commercial-Industrial): Map 11, Lots 11 and 12; Map 12, Lot 15, also, Map 12, Lot 14 on Elm St. from Commercial to ICI (Integrated Commercial-Industrial). (1996)
2. Rezone the following parcels on Nashua St. from Industrial to ICI (Integrated Commercial-Industrial): Map 44, Lots 12, 13 and 13-1. (1996)
3. Rezone the following parcels on Nashua St. from Residence "B" to Limited Commercial-Business: Map 32, Lots 2, 3, 4, 5, and 6; Map 43, Lots 51, 52 and 53; and Map 44, Lot 3. (1996)
4. Rezone the following parcels on Emerson Rd. from Residence "R" to ICI (Integrated Commercial-Industrial): Map 48, Lots 35, 35-1, 35-2, 37, 38 and 39. (1997)
5. Rezone the following parcels on Emerson Rd. from ICI (Integrated Commercial-Industrial) to "C" Commercial: Map 48, Lots 35, 35-1, 35-2, 37, 38 and 39. (2003)
6. Rezone the following parcels on Emerson Rd. from Residence "R" to "C" - Commercial: Map 48, Lots 36, 36-1, and that portion of Lot 52 lying westerly of a line beginning at a point on the southerly right-of-way line of Emerson Road, said point being 223.67 feet westerly of the northeasterly corner of Lot 52; said line extending in a southeasterly direction to a point on the southerly boundary line of Lot 52 lying 234.52 feet southwest of the southeast property corner of said lot. (2003)
7. Rezone the following parcels on Emerson Rd. and Federal Hill Rd. from Residence "A" to "C" - Commercial: Map 48, Lot 42, and that portion of Map 48, Lot 41 lying northerly of a line extended from the southeasterly corner of Map 48, Lot 44 to the southwesterly corner of Map 48, Lot 52. (2003)

ARTICLE IV: DEFINITIONS

4.010 PURPOSE

For the purpose of this Ordinance, the word "shall" is mandatory, the word "may" is permissive, and the following terms shall have the following meanings.

Abutter - Any person whose property adjoins or is directly across the street, stream or railroad property from the land under consideration. Railroad property is an abutter and must be notified. For the purposes of receiving testimony only, and not for purposes of notification, the term abutter shall include any person who is able to demonstrate that his/her land will be directly affected by the proposal under consideration. (1988)

Accessory Use or Structure - A use or structure on the same lot with, and of a nature incidental and subordinate to, the principal use or structure.

Agriculture - The word agriculture shall mean all operations of a farm such as the cultivation, conserving, and tillage of the soil; dairying; greenhouse operations; the production, cultivation, growing and harvesting of any agricultural, floricultural, sod or horticultural commodities; the raising of livestock, bees, fur-bearing animals, freshwater fish or poultry; or any practices on the farm incidental to or in conjunction with such farming operations. This includes, but is not necessarily restricted to, the following: preparation for market, delivery to storage or to market, or to carriers for transportation to market, of any products or materials from the farm, the transportation to the farm of supplies and materials, the transportation of farm workers, forestry or lumbering operations, the marketing or selling at wholesale or retail or in any other manner any products from the farm and of other supplies that do not exceed in average yearly dollar volume the value of products from such farm. (1997)

Animal feedlot - Land on which livestock is kept for the purpose of feeding.

Aquifer - Geological formation composed of rock or sand and/or gravel that contains significant amounts of potentially recoverable potable water.

Assisted Living Facility - units for persons sixty-two (62) years of age and older where rooms, meals, personal care and supervision of self-administered medication are provided. Other services may be provided as an accessory use only, such as recreational activities, financial services, and transportation. (2002)

Bed & Breakfast - A building for transient occupancy which also provides breakfast to registered guests only and is owner occupied. (1997)

Building - Any structure used or intended for supporting or sheltering any use or occupancy. (1992)

Church - A building or structure, or groups of buildings or structures, that by design and construction are primarily intended for conducting organized religious services. See also House of Worship (1996)

Community Center - A building used for recreational, social, educational and cultural activities, open to the public or a designated part of the public, usually owned and operated by a public or non-profit group or agency. (1996)

Congregate Care Facility - units for persons sixty-two (62) years of age and older where communal dining facilities and services such as housekeeping, organized social and recreational activities, transportation services, and other support services appropriate for the residents are provided. (2002)

Day Care Facility - Those facilities, as licensed by the State of New Hampshire, and defined by NH RSA 170-E:1 as providing child care under one or more of the following categories: (1994)

A. Pre-School Program - A facility regularly providing a structured program up to five (5) hours per day for seven (7) or more children who are three (3) years of age or older and who are not attending a full-day school program. The number of children shall include all children present during the period of the program, including those children related to the caregiver.

B. Group Pre-School Center - A facility regularly providing full-day or half-day child care for thirteen (13) or more pre-school children, whether or not the service is known as a day nursery, nursery school, kindergarten, cooperative, child development center, day care center, center for the developmentally disabled, progressive school, Montessori school or by any other name.

C. Day Care Nursery - A facility in which child care is regularly provided for any part of the day, but less than twenty-four (24) hours except in emergencies for five (5) or more children under the age of three (3). The five (5) children shall include all children present during the period of child care, including those children related to the care giver, except children related to the care giver who are ten (10) years of age or older.

D. After-School Program - A facility in which child care is regularly provided up to five (5) hours per school day, before and/or after regular school holidays, for six (6) or more children who are enrolled in a full day program.

Day Care facility, for the purposes of this Ordinance, does not include "family day care home" as defined in RSA 170-E:1.

Density - For the purposes of this Ordinance, density is used to define residential dwelling units per acre, and is based on the allowable units per acre in each residential district. High density refers to allowable densities in the Residence "B" District, medium density refers to allowable densities in the Residence "A" District; and low density refers to allowable densities in the Residence "R" District. (1997)

Distribution and Mailing Facilities - Uses which constitute the temporary storage and/or shipping of goods, including mail order processing, package distribution and mailing. (1995)

Drive Aisle - the traveled passageway by which vehicles enter and depart parking spaces. (2002)

Driveway - a vehicular passageway providing access between a road and a parcel of land. (2002)

Driveway, common commercial/industrial - a single driveway that provides access between a road and two (2) or more conforming commercial and industrial lots. (2002)

Driveway, common residential - a single driveway that provides access between a road and not more than two (2) conforming residential lots. (2002)

Dwelling Unit - One room or rooms connected together, constituting a separate, independent housekeeping establishment physically separated from any other dwelling units in the same structure, and containing independent cooking and sleeping facilities.

Dwelling, Single-family - A detached residential dwelling unit, other than a mobile home, designed for one family only.

Dwelling, Two-family - A structure which contains two (2) separate dwelling units, each provided with complete and independent living facilities for one or more persons, including provisions for living, sleeping, eating, cooking, and sanitation as well as independent access and egress to and from each living unit. (1986)

Dwelling, Multi-family - A structure consisting of three (3) or more dwelling units designed for occupancy by three or more families. (1995)

Family - One or more persons occupying a dwelling unit and living as a single non-profit housekeeping unit.

Family Day Care Home - An occupied residence in which child care is regularly provided for less than twenty-four

(24) hours per day, except in emergencies, for one (1) to six (6) children from one or more unrelated families. The six (6) children shall include any foster children residing in the home and all children who are related to the caregiver except children who are (ten) 10 years of age or older. In addition to the six (6) children, one (1) to three (3) children attending a full-day school program may also be cared for up to five (5) hours per day on school days and all day during school holidays. (1994)

Filling Station - A building or structure, or part thereof, or any premises used in connection with tanks, pumps, and other appliances for supplying motor vehicles with gasoline, oil, water, compressed air and similar supplies, but not used for the purpose of making repairs. (1995)

Frontage - the side or sides of a lot abutting a road. (2002)

Funeral Home - A building used for the preparation of the deceased for burial and the display of the deceased and rituals connected therewith before burial or cremation. (1996)

Groundwater - Slowly moving subsurface water present in aquifers and recharge areas.

Groundwater Recharge Areas - Areas composed of permeable stratified sand and/or gravel and certain wetlands, which collect precipitation surface water and carry it to aquifers.

Hazardous or Toxic Materials or Liquids - Materials or liquids that pose a threat present or future to the environment whether in use, storage or transit, including without exception hazardous waste identified and listed in accordance with Section 3001 of the Resource Conservation and Recovery Act of 1976 as amended. (1993)

Home Occupation - Any use conducted entirely within a dwelling or an accessory building which is clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change the character thereof, and in connection with which there is no outside display or storage, nor emission of dust, noise, fumes, vibration or smoke beyond the lot line (See Article X, Para. 10.023).

Hotel/Motel - A building or any part of a building, containing rooming units without individual cooking facilities, for transient occupancy and having a common entrance(s), including an inn, motel, motor inn and tourist court, but not including a boarding house, lodging house, or bed and breakfast. (1995)

House of Worship - A building or structure, or groups of buildings or structures, that by design and construction are primarily intended for conducting organized religious services. See also Church (2001)

Independent Senior Housing Units - dwelling units for persons sixty-two (62) years of age and older. (2002)

Junkyard - An establishment or place of business which is maintained, operated, or used for storing, keeping, buying or selling junk, or for the maintenance or operation of an automotive recycling yard, and includes garbage dumps and sanitary fills. Also includes any business and any place of storage or deposit, whether in connection with another business or not, which has stored or deposited two (2) or more unregistered motor vehicles which are no longer intended or in condition for legal use on the public highways, or used parts of motor vehicles or old iron, metal, glass, paper, cordage, or other waste or discarded or second-hand material which has been a part, or intended to be a part, of any motor vehicle, the sum of which parts or material shall be equal in bulk to two (2) or more motor vehicles. Junk yard shall also include any place of business or storage or deposit of motor vehicles purchased for the purpose of dismantling the vehicles for parts or for use of the metal for scrap and where it is intended to burn material, which are parts of a motor vehicle or cut up the parts thereof. Also, includes any yard or field used as a place of storage in which there is displayed to the public view, junk machinery or scrap metal that occupies an area of five hundred (500) square feet. (1995)

Kennel - Any lot or premises on which four (4) or more dogs other than personal pets, at least four (4) months of age, are kept, boarded or trained whether in special structures or runways or not. The foregoing definition shall specifically exclude veterinary clinics. (1983)

Leachable Wastes - Waste materials including solid wastes, sewage, sludge, and agricultural wastes that are capable of releasing waterborne contaminants to the surrounding environment.

Lot - The whole area of a single parcel of land, with assertable boundaries in single or joint ownership undivided by a street and established by deeds of record. (1999)

Lot line, front - the lot line of record separating a lot from a road. (2002)

Lot of Record - A lot or parcel described by metes and bounds, the description of which has been so recorded in the Hillsborough County Registry of Deeds. (1999)

Lot Use - A parcel of land occupied or capable of being occupied by one building or use, and the buildings or uses accessory thereto, including such open spaces and yards as are required by this Ordinance. (1999)

Manufactured Housing - Any structure, transportable in one or more sections, which, when in the traveling mode, is eight (8) body feet or more in width and forty (40) body feet or more in length, or when erected on site is three hundred twenty (320) sq. ft. or more, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to required utilities, which include plumbing, heating and electrical heating systems contained herein. Manufactured housing as defined in this section does not include pre-site built housing as defined in RSA 674:31-A or recreational vehicles as defined in this code (See Pre-site Housing). (1995)

Manufactured Housing Park - A parcel of land upon which two (2) or more manufactured homes are, or are intended to be, placed and occupied as dwellings. (1995)

Manufacturing - The making of goods or materials from raw materials or unfinished products, includes assembling and processing. (1997)

Mining of Land - The removal or relocation of geological materials such as topsoil, sand, gravel, metallic ores or bedrock.

Motor Vehicle Repair Facility - A building or structure or part thereof, or any premises used for making changes, adjustments or repairs to motor vehicles, may also include structural repairs, painting and work involving use of machinery. May also include retail sale of motor vehicle parts and accessories and retail sale of petroleum products. (1995)

Net Tract Area - The total area of a parcel less all areas within the one hundred (100) year flood plain, all wetlands as defined by the National Cooperative Soil Survey, and slopes in excess of fifteen (15) percent as delineated by the Planning Board.

Nursery - The grounds and premises, private or public, on or in which nursery stock is propagated, grown or cultivated for the purpose of distributing or selling nursery stock as a business. This shall include the on-site retail distribution of nursery stock provided, however, under this definition it is not intended that such retail distribution will be in the form of a retail store or be the principal use of the premises. (1990)

Nursery Stock - All hardy deciduous and evergreen trees and shrubs, brambles, woody vines, woody florist stock and herbaceous annuals and perennials, their roots, cuttings, grafts, scions, buds, seeds and plant parts thereof, including any collected plants, for and capable of propagation. (1990)

Office - The building, room or series of rooms in which the affairs of a business, profession or branch of government are conducted. (1995)

Open space - Permeable surface on a lot that is unoccupied by buildings, unobstructed to the sky, not devoted to service driveways or off-street parking that is available to all occupants of the premises. (1995)

Parking Space - An off-street space sufficient in size to accommodate the parking of one motor vehicle exclusive of the area necessary for internal access driveways and passageways on any site. The Planning Board shall develop such standards and requirements regulating the size and arrangement of parking spaces, as it may deem necessary and appropriate. (1985)

Person - Any individual, firm, co-partnership, corporation, company, association, joint stock association or body politic, trustee, receiver, assignee, or other similar representative thereof.

Portable Sign - Any sign that is not permanently affixed to a structure or the ground shall be considered a portable sign. (1988)

Pre-site Built Housing - Any structure designed primarily for residential occupancy which is wholly or in substantial part made, fabricated, formed or assembled in off-site manufacturing facilities in conformance with the United States Department of Housing and Urban Development minimum property standards and local building codes, for installation, or assembly and installation on the building site. For the purposes of this definition, pre-site built housing does not include manufactured housing. (See manufactured housing) (1995)

Principal Route of Access - A principal route of access within the meaning of this Ordinance shall be deemed to consist of any public way, which the Town has a duty to maintain. (1985)

Private Way - A driveway which the Town has no duty to maintain which provides access to no more than two (2) building lots but not including any Class VI Highway as defined by NH RSA and subject to Section 7.040 Private Ways. (See Driveway; Driveway, Common) (1995)

Processing and Warehousing - The storage of materials in a warehouse or terminal where such materials may be combined, broken down, or aggregated for distribution or storage and where the original material is not chemically or physically changed. Processing and warehousing is considered to be storage and shipment as opposed to manufacturing. (1997)

Processing of Natural Resources - A series of operations, usually in a continuous and regular action or succession of actions, performed to create products from materials supplied by nature. (1997)

Public Utility - Buildings, structures and facilities, including generating and switching stations, poles, lines, pipes, pumping stations, repeaters, antennas, transmitters and receivers, valves and all buildings and structures relating to the furnishing of utility services, such as electric, gas, telephone, communications, water, sewer and public transit, to the public. (1996)

Recreation, active - leisure time activities, usually of a formal nature and often performed with others, requiring equipment and taking place at prescribed places, sites, or fields. (2002)

Recreation, passive - leisure time activities that involve relatively inactive or less energetic activities such as walking, sitting, picnicking, card games, chess, checkers, or similar table games. (2002)

Recreational Facility, Commercial - A place designed and equipped for the conduct of leisure-time activities, operated as a business for profit and open to the public for a fee. This includes, but is not limited to, places of amusement such as bowling alleys, miniature golf courses, movie theaters, health and fitness clubs, sports fields, golf courses, accessory food service and concessions, and similar types of establishments. (1997)

Recreational Facility, Not-for-Profit - A place designed and equipped for the conduct of leisure-time activities open to the general public, owned and operated by a not-for-profit organization. (1996)

Recreational Vehicle - A temporary dwelling for travel, recreation, and vacation use including but not limited to, camping trailer, travel trailer, pick-up coach to be mounted on a truck chassis, or a self-propelled motor home.

Research and Development - A place devoted to activities engaged in refinement, investigation or experimental study of methods to improve processes or products. Manufacturing of products is not included within this definition. (1994)

Retail Businesses - Uses which constitute the sale of goods or the delivery of service and/or repair. (1994)

Right-of-way - a section of land acquired by easement, reservation, dedication, prescription, or condemnation, duly recorded in the Hillsborough County Registry of Deeds, and intended to be occupied by a road, crosswalk, railroad, utility lines, and/or other similar uses; and furthermore, the right to pass over the property of another. (2002)

Road - any vehicular right-of-way that: (1) is an existing federal, state, Town, or privately owned and maintained roadway; (2) is shown upon a plan approved pursuant to NH RSAs; (3) is shown on a plan duly filed and recorded in the Office of the Hillsborough County Registry of Deeds; or (4) is approved by any other official action of the Town of Milford. A road contains all the land within the right-of-way. (2002)

Roadway - the traveled portion of a road within a right-of-way. (2002)

Self-Service Storage Facilities - A structure containing separate, individual, and private storage spaces of varying sizes leased or rented on individual leases for varying periods of time. (1997)

Setback - That horizontal distance measured between the right-of-way of a road or a side or rear lot line and the closest point of any building or structure contained on the lot.

Schools - Any building, part thereof, or group of buildings, the use of which meets State requirements for elementary, secondary, vocational or higher education. (1996)

Sign - Any device for visual communication that is used for the purpose of bringing the subject thereof to the attention of the public, but not including any flag.

Solid Waste Disposal Sites - Areas for disposal of any matter consisting of putrescible material, refuse, or residue from an air pollution control facility; and other discarded or abandoned material. It includes solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations and from community activities. For the purpose of this Chapter, namely RSA 149-M and the rules specified in ENV-WM 101.01 Applicability, "it does not include hazardous wastes as defined in RSA 147-A:2; solid or dissolved materials in irrigation return flows; cut or uprooted tree stumps incident to clearing of land depicted on a site plan showing burial locations and mailed to the director, provided that such burial locations are not located within seventy-five (75) feet of any well as defined in RSA 485:37; municipal and industrial discharges which are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, as amended; source, special nuclear or by-product materials as defined by the atomic energy act of 1954, as amended, or septage or sludge as defined in RSA 485-a:2, IX-a and XI a" ("Solid Waste" shall not include deceased persons). (1995)

Solid Wastes - Useless, unwanted, or discarded solid material with insufficient liquid content to be free flowing including, but not limited to rubbish, garbage, scrap materials, junk refuse, inert fill material and landscape refuse.

Structure - A combination of materials for occupancy or use, such as, but not limited to, a building, bridge, trestle, tower, tunnel, pier, wharf, fences and retaining walls over six (6) feet in height above grade, and swimming pools. (1992) (amended 2001)

Structure, Non-conforming - A structure which is lawfully maintained at the time this Ordinance became effective and which does not conform with the regulations of the district in which it is located.

Usable land - land that does not consist of wetland and slopes over fifteen (15) percent. (2002)

Use, Non-conforming - A use which is lawfully occupied or used as a structure or lot at the time this Ordinance became effective and which does not conform with the use regulations of the district in which it is located.

Veterinary Clinics - A structure in which animals are given medical or surgical treatment and are cared for during the time of treatment only. (1994)

Warehouse - A building used primarily for the storage of goods and materials. (1997)

Wetland - An area that is inundated or saturated by surface or ground water at a frequency or duration sufficient to support, and under normal conditions, does support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include, but are not limited to, swamps, marshes, bogs and similar areas. (1996)

Wholesale Businesses - Uses which constitute the sale of goods in quantity, usually for resale. (1994)

Yard - A required open space parallel to the lot lines which is open to the sky and unoccupied and unobstructed by a building or buildings.

Yard, Front - A yard between the building and front lot line, extending the full width of the lot or, in case of a corner lot, extending along all streets.

Yard, Rear - A yard extending between side lot lines across the rear of the lot.

Yard, Side - A yard extending from the rear line of the required front yard to the front line of the required rear yard.

ARTICLE V: ZONING DISTRICTS AND REGULATIONS

5.020 RESIDENCE "A" DISTRICT (1995)

INTENT: The intent of the Residence "A" District is to provide for low-density or low-intensity uses, primarily single-family residential on individual lots.

5.021 ACCEPTABLE USES

- A. Single-family dwellings and their accessory uses and structures.
- B. Telecommunication facilities (2000)

5.022 ACCEPTABLE USES AND YARD REQUIREMENTS BY SPECIAL EXCEPTION

- A. Home occupations in accordance with Section 10.023
- B. Recreational facility, not-for-profit (1997)
- C. Day care facilities
- D. Family day care homes
- E. Churches
- F. Public utility uses necessary for public welfare
- G. Schools
- H. Reduced front, side and rear setbacks (2001)
- I. Bed & breakfast (1997)
- J. Recreational facility, commercial (1997)

5.023 USES NOT SPECIFIED (1997)

Any uses of land and/or structures not specifically included in the "A" District as either acceptable or acceptable by special exception shall be considered as not permitted.

5.024 LOT SIZES AND FRONTAGES

- A. The minimum lot size and frontage for single-family residence and all other acceptable uses in the Residence "A" District shall be:
 - 1. Those areas serviced by both municipal sewerage and water systems shall have lots not less than fifteen thousand (15,000) square feet in area with one hundred (100) feet of frontage on a principal route of access.
 - 2. Those areas not serviced by both municipal sewerage and water systems shall have single-family lots not less in area than forty thousand (40,000) square feet, or larger depending on soil and slope conditions, as may be suitable to sustain development according to State standards, with one hundred fifty feet (150') of frontage on a principal route of access.

5.025 YARD REQUIREMENTS (1996)

- A. Each structure shall be set back at least thirty (30) feet from the front property line.
- B. Each structure shall be at least fifteen (15) feet from the side and rear property lines. In case of a corner lot, the side distance shall be increased to thirty (30) feet on the side bordering the street, lane or public way.
- C. Accessory structures, one hundred-twenty (120) square feet or less, on lots serviced by municipal sewerage and water systems shall have a minimum setback from the side and rear property lines of six (6) feet.

5.030 RESIDENCE "B" DISTRICT (1995)

INTENT: The intent of the Residence "B" District is to provide areas for increased residential density and other uses which are compatible with these residential densities.

5.031 ACCEPTABLE USES

- A. Single-family dwellings and their accessory uses and structures.
- B. Two-family dwellings and their accessory uses and structures.
- C. Multi-family dwellings with municipal sewerage and water systems and their accessory uses and structures.
- D. Telecommunication facilities (2000)

5.032 ACCEPTABLE USES AND YARD REQUIREMENTS BY SPECIAL EXCEPTION

- A. Hospital and/or related facilities licensed by the State of NH.
- B. Schools
- C. Funeral homes
- D. Home occupations in accordance with Section 10.023
- E. Day care facilities
- F. Family day care homes
- G. Recreational facility, commercial (1997)
- H. Recreational facility, not-for-profit (1997)
- I. Public utilities necessary for public welfare
- J. Bed & breakfast (1997)
- K. Reduced front, side and rear setbacks, (amended 2001).

5.033 USES NOT SPECIFIED (1997)

Any uses of land and/or structures not specifically included in the "B" District as either acceptable or acceptable by Special Exception shall be considered as not permitted.

5.034 ALLOWABLE DENSITY

Multi-family residences in the Residence "B" District shall adhere to the following conditions for development:

- A. Multi-family dwellings shall be served by both municipal sewerage and water systems and may have a maximum of five (5) units per acre. The maximum density may be reduced by the Planning Board based on recommendations of other qualified consultants.
 - 1. The maximum number of approved units permitted in any multi-family dwelling proposal shall be determined by multiplying the net tract area by the maximum density allowed above.
- B. In the conversion of an existing house to apartments or multi-family dwellings, a maximum of five (5) units per acre of land associated with the existing house shall be permitted, given the following conditions:
 - 1. The proposal meets the standards set forth for maximum density (5.034), yard requirements (5.036) and usable open space (5.037). (1996)

5.035 LOT SIZES AND FRONTAGES (1987)

- A. The following provisions shall apply to all other acceptable uses in this District, except single family residences.

1. In those areas serviced by both municipal sewerage and water systems, the minimum lot size in Residence "B" shall have as a minimum, twenty thousand (20,000) square feet in area with one hundred fifty (150) feet of frontage on a principal route of access.
 2. In those Residential "B" areas not serviced by both municipal sewerage and water systems, the minimum lot size shall be sixty thousand (60,000) square feet in area or larger, depending on soil and slope conditions, as may be necessary to sustain development according to state standard with two hundred, twenty-five (225) feet of frontage on a principal route of access.
- B. The minimum lot size and frontage for a single-family residence in this District shall be the same as those set forth for the Residence "A" District in section 5.024 of this article.

5.036 YARD REQUIREMENTS

- A. Each structure shall be set back at least thirty (30) feet from the front lot line.
- B. Each structure shall be at least fifteen (15) feet from side and rear property lines. In case of a corner lot, the side distance shall be increased to thirty (30) feet on the side bordering the street, lane or public way.

5.037 OPEN SPACE

- A. Open space shall be provided for all uses, other than single-family and two-family dwellings in an amount equal to not less than thirty (30) percent of the total lot area.

5.040 RESIDENCE "R" DISTRICT (2001)

INTENT: The intent of the Residence "R" District is to provide for low-density residential and agricultural land uses, and other compatible land uses, that are sensitive to the rural character and environmental constraints existing in the district.

5.041 ACCEPTABLE USES

- A. One single-family dwelling and its accessory uses and structures, per lot.
- B. Agriculture (1997)
- C. One single family manufactured housing unit, per lot.
- D. Harvesting of natural resources
- E. Telecommunication facilities (2000)

5.042 ACCEPTABLE USES BY SPECIAL EXCEPTION

- A. One two-family dwelling per lot. (2001)
- B. Veterinary clinics
- C. Home occupations in accordance with Section 10.023
- D. Day care facilities
- E. Family day care home
- F. Schools
- G. Reduced front, side and rear setbacks. (2001)
- H. Bed & breakfast (1997)
- I. Processing of natural resources on parcels of a minimum ten (10) acres in size (1997)
- J. Recreational facility, not-for-profit (1997)
- K. Recreational facility, commercial (1997)
- L. Self-service storage facilities in accordance with Section 10.024 (1997)
- M. Churches and Houses of Worship (2001)

5.043 USES NOT SPECIFIED (1997)

Any uses of land and/or structures not specifically included in the "R" District as either acceptable or acceptable by Special Exception shall be considered as not permitted.

5.044 LOT SIZES AND FRONTAGES

- A. The minimum lot size and frontage for a single-family dwelling or a single-family manufactured housing unit and all other permitted uses, unless stated otherwise, in the residence "R" District shall be two (2) acres (87,120 SF), or greater, depending on soil and slope conditions, with a minimum two hundred (200) feet of frontage on a principal route of access.
- B. The minimum lot size and frontage for a two-family dwelling as allowed by Special Exception in the Residence "R" District shall be four (4) acres (174,240 SF), or greater, depending on soil and slope conditions, with a minimum three hundred (300) feet of frontage on a principal route of access.

5.045 YARD REQUIREMENTS

- A. Each structure shall be set back at least thirty (30) feet from the front lot line.

- B. Each structure shall be at least fifteen (15) feet from side and rear property lines. In case of a corner lot, the side distance shall be increased to thirty (30) feet on the side bordering the street, lane or public way.

5.046 OPEN SPACE

- A. Open space shall be provided for all uses, other than single family and two-family dwellings, in an amount equal to not less than thirty (30) percent of the total lot area.

5.050 COMMERCIAL DISTRICT (1995)

INTENT: The intent of this District is to provide areas for those business, institutional, financial, governmental and compatible residential uses which constitute the commercial requirements of the Town.

5.051 ACCEPTABLE USES

- A. Retail businesses
- B. Wholesale businesses
- C. Restaurants
- D. Filling stations and motor vehicle repair facilities
- E. Offices
- F. Banks and financial institutions
- G. Hospitals and/or medical facilities licensed by the State of New Hampshire
- H. Schools
- I. Hotels/motels
- J. Churches
- K. Bed & breakfast (1997)
- L. Laundries and dry cleaning
- M. Newspaper and job printing
- N. Funeral homes
- O. Single-family dwellings and their accessory uses and structures, with their respective related conditions set forth in Residence "A" District
- P. Two-family and multi-family dwellings and their accessory uses and structures, with their respective related conditions set forth in Residence "B"
- Q. Home occupations in accordance with Section 10.023
- R. Recreational facility, not-for-profit (1997)
- S. Recreational facility, commercial (1997)
- T. Telecommunication facilities (2000)

5.052 ACCEPTABLE USES AND YARD REQUIREMENTS BY SPECIAL EXCEPTION

- A. Day care facilities
- B. Family day care homes
- C. Reduced front, side and rear setbacks.
- D. Manufacturing in accordance with Section 10.025. (2003)

5.053 USES NOT SPECIFIED (1997)

Any uses of land and/or structures not specifically included in the Commercial District as either acceptable or acceptable by Special Exception shall be considered as not permitted.

5.054 LOT SIZES AND FRONTAGES

- A. In those areas serviced by both municipal sewerage and water systems, the minimum lot size in Commercial District shall be twenty thousand (20,000) square feet, together with one hundred and fifty (150) feet of frontage on the principal route of access.

- B. In those commercial areas not serviced by municipal sewerage and water systems, the minimum lot size shall be sixty thousand (60,000) square feet, together with two hundred twenty-five (225) feet of frontage on the principal route of access.

5.055 YARD REQUIREMENTS (1995)

- A. Each structure shall be set back at least thirty (30) feet from the front lot line.
- B. Each structure shall be at least fifteen (15) feet from side and rear property lines. In case of a corner lot, the side distance shall be increased to thirty (30) feet on the side bordering the street, lane or public way.

5.056 OPEN SPACE

- A. Open space shall be provided for all uses, other than single family and two-family dwellings, in an amount equal to not less than thirty (30) percent of the total lot area.

5.057 EXEMPTION FROM YARD AND OPEN SPACE REQUIREMENTS

The following area shall be exempt from the open space and yard requirements for all allowable uses in the Commercial District except multi-family residences: bounded by and beginning at the intersection of Great Brook and the Souhegan River, proceeding East along the southern bank of the Souhegan River to the Swinging Bridge, proceeding south along the west line of Pine Street to the intersection with Nashua Street, continuing south along the west line of Franklin Street to its intersection with High Street, then proceeding west along the north line of High Street and continuing west along the south line of Lot 39 on Tax Map 25 to the southwest corner of that parcel intersection with Great Brook and then proceeding north along the east bank of Great Brook to the beginning.

5.060 INDUSTRIAL DISTRICT (1995)

INTENT: The intent of the Industrial District is to provide areas for manufacturing, processing, assembly, wholesaling, research and development.

5.061 ACCEPTABLE USES

- A. Harvesting and/or processing of natural resources
- B. Manufacturing (from Light manufacturing 2003)
- C. Office buildings in excess of fifteen thousand (15,000) square feet
- D. Research and development
- E. Distribution and mailing facilities
- F. Processing and warehousing
- G. Telecommunication facilities (2000)

5.062 USES NOT SPECIFIED (1997)

Any uses of land and/or structures not specifically included in the Industrial District as either Acceptable or Acceptable by Special Exception shall be considered as not permitted.

5.063 LOT SIZES AND FRONTAGES

- A. In those areas serviced by both municipal sewerage and water systems, no minimum lot size and frontage shall be required, other than those requirements that relate to usable open space so long as access to sewer and water is obtained.
- B. In those areas not serviced by municipal sewerage and water systems, a minimum of forty thousand (40,000) square feet shall be required, depending on soil and slope. No minimum frontage shall be required.

5.064 YARD REQUIREMENTS

- A. Each structure shall be set back at least thirty (30) feet from the front lot line.
- B. Each structure shall be at least fifteen (15) feet from side and rear property lines. In case of a corner lot, the side distance shall be increased to thirty (30) feet on the side bordering the street, lane or public way.

5.065 OPEN SPACE

- A. Open space shall be provided for all uses in an amount equal to not less than thirty (30) percent of the total lot area.

5.070 LIMITED COMMERCIAL-BUSINESS DISTRICT (1988)

INTENT: The intent of the Limited Commercial-Business District is to provide areas for those business activities which are compatible with surrounding residential neighborhoods.

5.071 ACCEPTABLE USES

- A. Offices
- B. Hospitals and/or medical facilities licensed by the State of NH
- C. Schools
- D. Bed and breakfast
- E. Churches
- F. Funeral homes
- G. Single-family dwellings and their accessory uses and structures, with their respective related conditions set forth in the Residence "A" District.
- H. Two-family and multi-family dwellings and their accessory uses and structures, with their related conditions set forth in the Residence "B" District.
- I. Home occupations in accordance with Section 10.023
- J. Telecommunication facilities (2000)

5.072 ACCEPTABLE USES AND YARD REQUIREMENTS BY SPECIAL EXCEPTION

- A. Day care facilities
- B. Family day care homes
- C. Recreational facility, not-for-profit (1997)
- D. Reduced front, side and rear setbacks.

5.073 USES NOT SPECIFIED (1997)

Any uses of land and/or structures not specifically included in the Limited Commercial-Business District as either Acceptable or Acceptable by Special Exception shall be considered as not permitted.

5.074 LOT SIZES AND FRONTAGES

- A. In those areas serviced by both municipal sewerage and water systems, the minimum lot size in Limited Commercial-Business District shall be twenty thousand (20,000) square feet, together with one hundred and fifty (150) feet of frontage on the principal route of access.
- B. In those Limited Commercial-Business areas not serviced by municipal sewerage and water systems, the minimum lot size shall be sixty-thousand (60,000) square feet, together with two hundred twenty-five (225) feet of frontage on the principal route of access.

5.075 YARD REQUIREMENTS

- A. Each structure shall be set back at least thirty (30) feet from the front lot line.
- B. Each structure shall be at least fifteen (15) feet from the side and rear property lines. In case of a corner lot, the side distance shall be increased to thirty (30) feet on the side bordering the street, lane or public way.

5.076 OPEN SPACE

- A. Open space shall be provided for all uses, other than single-family and two-family dwellings, in an amount equal to not less than thirty (30) percent of the total lot area.

5.080 INTEGRATED COMMERCIAL-INDUSTRIAL DISTRICT (ICI) (1995)

INTENT: The intent of the Integrated Commercial-Industrial District is to provide an area for sales and service activities, both wholesale and retail, as well as industrial activities. This District is intended to be the area in which vehicular oriented business can occur.

5.081 ACCEPTABLE USES

- A. Wholesale businesses
- B. Retail businesses
- C. Restaurants
- D. Offices
- E. Hotels/motels
- F. Day care facilities as an accessory to the principal use
- G. Public utility uses necessary for public welfare
- H. Manufacturing (from Light manufacturing 2003)
- I. Distribution and mailing facilities
- J. Research and development laboratories
- K. Motor vehicle repair facilities
- L. Harvesting of natural resources
- M. Banks and financial institutions
- N. Processing and warehousing (1997)
- O. Adult Entertainment Businesses (2000)
- P. Telecommunication facilities (2000)

5.082 ACCEPTABLE USES BY SPECIAL EXCEPTION

- A. Schools
- B. Recreational facility, not-for-profit (1997)
- C. Recreational facility, commercial (1997)
- D. Processing of natural resources (1997)

5.083 USES NOT SPECIFIED (1997)

Any uses of land and/or structures not specifically included in the ICI (Integrated Commercial-Industrial) District as either Acceptable or Acceptable by Special Exception shall be considered as not permitted.

5.084 LOT SIZES AND FRONTAGES

- A. In those areas serviced by both municipal sewerage and water systems, the minimum lot size in the Integrated Commercial-Industrial District shall be twenty thousand (20,000) square feet, together with a minimum of one hundred fifty (150) feet of frontage on the principal route of access.
- B. In those areas not serviced by municipal sewerage and water systems, a minimum of forty thousand (40,000) square feet shall be required, depending upon soil and slope conditions, together with a minimum of one hundred fifty (150) feet of frontage on the principal route of access.

5.085 YARD REQUIREMENTS

- A. Each structure shall be set back at least thirty (30) feet from the front lot line.

- B. Each structure shall be set back at least fifteen (15) feet from side and rear property lines. In the case of a corner lot, the side distance shall be increased to thirty (30) feet on the side bordering the public way.

5.086 OPEN SPACE

- A. Open space shall be provided in an amount equal to not less than thirty (30) percent of the total lot area.

ARTICLE VI: OVERLAY DISTRICTS

6.010 GROUNDWATER PROTECTION DISTRICT (2003)

6.011 GENERAL

A. PURPOSE

In the interest of public health, safety, and general welfare, the purpose of this ordinance is to preserve, maintain, and protect from contamination existing and potential groundwater supply areas.

This is to be accomplished by regulating land uses that could contribute pollutants to existing and/or planned public and/or private wells and/or ground water resources identified as being needed for present and/or future public water supply.

B. DEFINITIONS

Groundwater: subsurface water that occurs beneath the water table in soils and geologic formations. [RSA 485-C, Groundwater Protection Act]

Impervious: (with respect to stormwater infiltration) not readily permitting the infiltration of water.

Impervious surface: (with respect to containment of regulated substances) a surface through which regulated substances cannot pass when spilled. Impervious surfaces include concrete unless unsealed cracks or holes are present. Asphalt, earthen, wooden, or gravel surfaces; or other surfaces which could react with or dissolve when in contact with the substances stored on them are not considered impervious surfaces. [Env-Ws 421.03(c)]

Junkyard: An establishment or place of business which is maintained, operated, or used for storing, keeping, buying or selling junk, or for the maintenance or operation of an automotive recycling yard, and includes garbage dumps and sanitary fills. Also includes any business and any place of storage or deposit, whether in connection with another business or not, which has stored or deposited two (2) or more unregistered motor vehicles which are no longer intended or in condition for legal use on the public highways, or used parts of motor vehicles or old iron, metal, glass, paper, cordage, or other waste or discarded or second-hand material which has been a part, or intended to be a part, of any motor vehicle, the sum of which parts or material shall be equal in bulk to two (2) or more motor vehicles. Junkyard shall also include any place of business or storage or deposit of motor vehicles purchased or acquired for the purpose of dismantling the vehicles for parts or for use of the metal for scrap. Also, includes any yard or field used as a place of storage in which there is displayed to the public view, junk machinery or scrap metal that occupies an area of five hundred (500) square feet. The word does not include any motor vehicle dealers registered with the department of motor vehicles under RSA 261:104 and in compliance with RSA 236:126.

Outdoor storage: storage of materials where they are not protected from the elements by a roof, walls, and a floor with an impervious surface.

Public water system: a system for the provision to the public of piped water for human consumption, if such system has at least fifteen (15) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. [RSA 485:1-a, XV]

Regulated substance: petroleum, petroleum products, and substances listed under 40 CFR 302, 7-1-90 edition or as amended, excluding the following substances: (1) ammonia, (2) sodium hypochlorite, (3) sodium hydroxide, (4) acetic acid, (5) sulfuric acid, (6) potassium hydroxide, (7) potassium permanganate, and (8) propane and other liquefied fuels which exist as gases at normal atmospheric temperature and pressure. [1-7 are used in the treatment of water supplies and are not considered to pose a significant risk to groundwater]

Sanitary protective radius: The area around a well, which must be maintained in its natural state as required by Env-Ws 378 or 379 (for community water systems) and Env-Ws 372.13 (for other public water systems).

Secondary containment: a structure such as a berm or a dike with an impervious surface that is adequate to hold at least one hundred ten (110) percent of the volume of the largest regulated substance container that will be stored. [Env-Ws 421.03(g)]

Snow dump: a location where snow, which is cleared from roadways and/or motor vehicle parking areas, is placed for disposal.

Stratified-drift aquifer: A geologic formation of predominantly well-sorted sediment deposited by or in bodies of glacial meltwater including gravel, sand, silt, or clay, which contains sufficient saturated permeable material to yield significant quantities of water to wells. [RSA 485-C:2, XIV]

Surface water: streams, lakes and ponds, including marshes, watercourses and other bodies of water, natural or artificial. [RSA 485-A:2 XIV]

Temporary Storage: means storage for less than six months.

Wellhead protection area: The surface and subsurface area surrounding a water well or well-field supplying a community water system, through which contaminants are reasonably likely to move toward and reach such water well or well-field. [RSA 485-C:2, XVIII]

C. LOCATION

The Groundwater Protection District includes all land areas designated as Level I and/or Level II Protection Areas on the map entitled "Groundwater Protection District - Milford, NH", dated October 24, 2002 or as amended. A copy of the map is located in the offices of the Town of Milford Planning Department.

The Groundwater Protection District is an overlay district which is superimposed over the existing underlying zoning.

D. APPLICABILITY

This Ordinance applies to all uses in the Groundwater Protection District, except for those uses exempt under 6.013.E of this Ordinance.

6.012 PERFORMANCE STANDARDS

The following Performance Standards apply to all uses in the Groundwater Protection District unless exempt under 6.013.E

- A. For any use that will render impervious more than fifteen (15) percent or more than two thousand five hundred (2,500) square feet of any lot, whichever is greater, a stormwater management plan shall be prepared which the planning board determines is consistent with Town of Milford Regulations;
- B. Stormwater management plans prepared pursuant to paragraph A shall demonstrate that stormwater recharged to groundwater will not result in violation of Ambient Groundwater Quality Standards (Env-Wm 1403.05) at the property boundary;
- C. All stormwater discharges to surface waters must be in compliance with EPA Phase II regulations;
- D. Post development stormwater discharges must be no greater than predevelopment stormwater discharges;
- E. Animal manures, fertilizers, and compost must be stored in accordance with Manual of Best Management Practices for Agriculture in New Hampshire, NH Department of Agriculture, Markets, and Food, August 1998, and any subsequent revisions;

- F. All regulated substances stored in containers with a capacity of five (5) gallons or more must be stored in product-tight containers on an impervious surface designed and maintained to prevent flow to exposed soils, floor drains, and outside drains;
- G. Facilities where regulated substances are stored must be secured against unauthorized entry by means of a door and/or gate which is locked when authorized personnel are not present;
- H. Outdoor storage areas for regulated substances must be protected from exposure to precipitation and must be located at least one hundred (100) feet from surface water or storm drains, at least seventy-five (75) feet from private wells, and outside the sanitary protective radius of wells used by public water systems;
- I. Secondary containment must be provided for outdoor storage of regulated substances if an aggregate of three hundred thirty (330) gallons or more of regulated substances are stored outdoors on any particular property;
- J. Containers in which regulated substances are stored must be clearly and visibly labeled and must be kept closed and sealed when material is not being transferred from one container to another.

6.013 USES

A. PERMITTED USES

All uses permitted by Milford Zoning Ordinance in the underlying district or allowed by special exception in the underlying district are permitted in the Groundwater Protection District unless they are Prohibited Uses, 6.013B or Uses Requiring a Permit, 6.013C. All uses must comply with 6.012 Performance Standards unless specifically exempt under section 6.013E.

B. PROHIBITED USES

The following uses are prohibited in the Groundwater Protection District Level I Protection Area:

- 1. The siting or operation of a hazardous waste disposal facility as defined under RSA 147-A;
- 2. The siting or operation of a solid waste landfill;
- 3. The outdoor storage of road salt or other deicing chemicals in bulk;
- 4. The siting or operation of a junkyard;
- 5. The siting or operation of a snow dump;
- 6. The siting or operation of a wastewater or septage lagoon;
- 7. Storage of liquid petroleum products, except the following:
 - a. that product necessary for the private business use occupying the lot, subject to all applicable State and Federal requirements. The aggregate tank capacity on each lot shall not exceed five thousand (5,000) gallons. No wholesale or retail sale of petroleum products.
 - b. normal household use and heating of a structure;
 - c. waste oil retention facilities required by statute, rule, or regulation;
 - d. emergency generators required by statute, rule, or regulation;
 - e. treatment works approved by NHDES for treatment of ground or surface waters;

Provided that such storage, listed in items a. through e. above, is in free-standing containers within buildings or above ground with secondary containment adequate to contain a spill one hundred ten (110) percent the size of the aggregate capacity of the stored containers.

C. USES REQUIRING A PERMIT IN LEVEL I AND/OR LEVEL II

1. The Code Administrator may grant a Permit for a use which is otherwise permitted within the underlying district, if the permitted use is or is involved in the storage, handling and/or use of a regulated substance in quantities exceeding five (5) gallons or forty (40) pounds dry weight at any one time. Prior to issuing a permit, a containment plan shall be provided or in place to prevent, contain, and/or minimize releases from a spill, which may cause large releases of regulated substances.
2. Planning Board approval is required for any use that will render impervious more than fifteen (15) percent or two thousand five hundred (2,500) square feet of any lot, whichever is greater.
 - a. Prior to the granting of such approval, the Code Administrator must first determine that the proposed use is not a prohibited use.
 - b. The Planning Board shall determine that the use will be in compliance with all the Performance Standards as well as all applicable local, state and federal requirements. The Planning Board may, at its discretion, require a performance guarantee or bond, in an amount and with surety conditions satisfactory to the Board, to be posted to ensure completion of construction of any facilities required for compliance with the Performance Standards.

D. EXISTING NONCONFORMING USES

Existing nonconforming uses may continue without expanding or changing to another nonconforming use, but must be in compliance with all applicable state and federal requirements, including NH Code of Administrative Rules Env-Ws 421, Best Management Practices.

E. EXEMPTIONS

The following uses are exempt from the specified provisions of this ordinance as long as they are in compliance with all applicable local, state, and federal requirements:

1. All private residences are exempt from the provisions of this ordinance provided no portion of the residence is part of a home business that violates the standards or conditions set forth in sections 6.012 and 6.013 of this ordinance;
2. Any business or facility where regulated substances are not stored in containers with a capacity of five (5) gallons or more is exempt from Performance Standards G through J;
3. Storage of heating fuels for on-site use or fuels for emergency electric generation, provided that storage tanks are indoors on an impervious concrete floor or have corrosion control, leak detection, and secondary containment in place, is exempt from Performance Standard G;
4. Storage of motor fuel in tanks attached to vehicles and fitted with permanent fuel lines to enable the fuel to be used by that vehicle is exempt from Performance Standards G through J;
5. Storage and use of office supplies is exempt from Performance Standards G through J;
6. Temporary storage of construction materials on a site where they are to be used is exempt from Performance Standards G through J;
7. The sale, transportation, and use of pesticides as defined in RSA 430:29 XXVI. are exempt from all provisions of this ordinance;
8. Household hazardous waste collection projects regulated under NH Code of Administrative Rules Env-Wm 401.03(b)(1) and 501.01(b) are exempt from Performance Standards G through J.

6.014 ADMINISTRATIVE

A. RELATIONSHIP BETWEEN STATE AND LOCAL REQUIREMENTS

Where both the State and the municipality have existing requirements the more stringent shall govern.

B. MAINTENANCE AND INSPECTION

1. For uses requiring planning board approval for any reason, a narrative description of maintenance requirements for structures required to comply with 6.012 Performance Standards, shall be recorded so as to run with the land on which such structures are located, at the Town of Milford Planning Department. All maintenance required is the responsibility of the owner and as such shall be maintained by the owner. The description so prepared shall comply with the requirements of RSA 478:4-a.
2. Inspections may be required to verify compliance with 6.012 Performance Standards. Such inspections shall be performed by the Code Administrator at reasonable times with prior notice to the landowner.
3. All properties within the Groundwater Protection District known to the Code Administrator as using or storing regulated substances in containers with a capacity of five (5) gallons or more, except for facilities where all regulated substances storage is exempt from this Ordinance under section 6.013E, shall be subject to inspections under this section.
4. The Board of Selectmen may require a fee for compliance inspections. The fee shall be paid by the property owner. A fee schedule shall be established by the Board of Selectmen as provided for in RSA 41:9-a.
5. Underground storage tank systems and above-ground storage tank systems that are in compliance with applicable state rules are exempt from inspections under 6.014.B of this ordinance.

C. ENFORCEMENT PROCEDURES AND PENALTIES

Any violation of the requirements of this ordinance shall be subject to the enforcement procedures and penalties in RSA 676.

D. SAVING CLAUSE

If any provision of this ordinance is found to be unenforceable, such provision shall be considered separable and shall not be construed to invalidate the remainder of the ordinance.

6.020 WETLAND CONSERVATION DISTRICT (AMENDED 2003)

6.021 GENERAL

- A. The Wetland Conservation District shall be considered as overlaying any other district established by this ordinance. Any use permitted in the portions of the district so overlaid shall only be permitted subject to all provisions of this section.
- B. Except for the permitted uses as listed in 6.025 of this section, there shall be no impact of wetlands or surface waters, unless all federal, state and local permits are in place.
- C. All impacts to wetlands shall be regulated in accordance with NH Code of Administrative Rules, Wt. 100-800 and require the receipt of the appropriate permit from the State of New Hampshire Department of Environmental Services Wetlands Bureau. The state process requires a review by the Milford Conservation Commission.
- D. The Milford Conservation Commission, established under RSA 36-A, has statutory standing before the Department of Environmental Services under RSA 482-A:11, III and provides a local source of assistance to both the department and the applicants for Dredge & Fill Permits.
- E. A special exception approved by the Milford Zoning Board of Adjustment shall be required for any use within the wetland except for those listed in 6.025. Note that state and/or federal permits may be required for uses not requiring a special exception under this ordinance.

6.022 PURPOSE

By the authority granted in New Hampshire RSA 674:16-17 and 674:20-21, the purpose of the Wetlands Conservation District is to protect the values and functions of wetlands, surface waters and their associated buffer zones. It is further intended, but shall not be limited to:

- A. Protect the public health, safety, general welfare and property;
- B. Reduce sedimentation of wetlands and surface waters;
- C. Aid in the control of non-point pollution;
- D. Provide a vegetative cover in the case of the buffer zones for filtration of runoff and the prevention of erosion;
- E. Protect fish spawning grounds, aquatic life, and bird and other wildlife habitats;
- F. Conserve natural beauty and open spaces;
- G. Preserve ponds, rivers and streams in their natural state,
- H. Protect persons and property from flood damage by preserving the natural flood storage areas,
- I. Control the development of structures and land uses which contribute to the pollution of surface and groundwater by sewerage, hazardous substances or siltation;
- J. Protect aquifers, which serve as existing or potential water supplies as well as the aquifer recharge system;
- K. Prevent unnecessary or excessive expenses to the Town to provide and maintain essential services and utilities which arise because of the inharmonious use of wetlands;

6.023 LOCATION OF THE WETLAND CONSERVATION DISTRICT

The areas within the town of Milford to which this section applies are as follows:

- A. **Streams** This includes both perennial and intermittent streams wherever fresh water flows for sufficient time to develop and maintain a defined channel. The area of the stream shall lie within the banks as

defined by the ordinary high water mark established by the fluctuations of water and indicated by physical characteristics such as a clear natural line impressed on the immediate bank, or shelving, or changes in the character of the soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

- B. **Ponds** The pond area shall be the extent of water at the full pond as determined by the top of the impoundment structure in artificial ponds or by the natural high water mark in natural ponds.
- C. **Wetlands** A wetland area shall be delineated based on hydrophytic vegetation, hydric soils and wetland hydrology in accordance with techniques outlined in the Corps of Engineers wetlands Delineation Manual, Technical Report Y-87-1 (January 1987).
- D. **Buffers** The buffer area shall be measured from the edge of any stream, pond, or wetland in a horizontal plane. The buffer is the area adjacent to a wetland and/or open water which should be kept free of uses that may introduce or facilitate pollution, sedimentation or other harmful effects to the wetland. The buffer shall include the area within twenty-five (25) feet from any wetland, stream, or pond area. For the water bodies named in 6.023 E, the buffer shall be fifty (50) feet from the edge of any stream, pond, or wetland in a horizontal plane.
- E. **Surface waters with 50 foot buffer area.** These water bodies are marked on a copy of the 7.5 minute USGS Milford Quadrangle Photo revised 1985 map located in the Planning Department. A copy of said map with the water bodies marked on it shall also be in the Conservation Commission Office.

The following water bodies together with any adjacent very poorly drained wetlands are protected by a fifty (50) foot buffer.

- 1. Birch Brook: from its commencement at the wetland lying between Whitten Road and Chappell Drive to its junction with Great Brook,
- 2. Compressor Brook: from its commencement as follows:
 - a. Compressor Brook, East Branch: from its entry into Milford at the Milford/Brookline Town Line in the southeast portion of Milford to its junction with Compressor Brook south of Melendy Road and east of Ruonala Road,
 - b. Compressor Brook, West Branch: from its beginning at a wetland on the west side of Ball Hill Road to its junction with Compressor Brook, East Branch, as described in a. above,
 - c. Compressor Brook: from the junction of the East Branch and the West Branch south of Melendy Road and east of Ruonala Road to its junction with Great Brook,
- 3. Great Brook: from its commencement at Mile Slip Road, approximately one thousand five hundred (1,500) feet south of Mason Rd. to Railroad Pond, and from Railroad Pond to the Souhegan River, including its passage through said pond,
- 4. Hartshorn Brook: from the Mont Vernon/Milford Town line, through Hartshorn Pond to its junction with the Souhegan River,
- 5. Mitchell Brook: from its entrance into Milford at the Milford/Mason Town line to its junction with Spaulding Brook,
- 6. Ox Brook: from its beginning in a wetland west of Melendy Road to its junction with Compressor Brook,
- 7. Purgatory Brook: from its entrance into Milford at the Milford/Lyndeborough Town line, to its junction with the Souhegan River,
- 8. Spaulding Brook: from its entrance into Milford at the Milford/Mason Town line to its exit from Milford at the Milford/Brookline Town line,

9. Tucker Brook: from its entrance into Milford in the vicinity of the granite bound on the Milford/Wilton Town line, to its junction with the Souhegan River,
10. Compressor Pond,
11. Hartshorn Pond,
12. Railroad Pond,
14. Osgood Pond,
15. Souhegan River.

F. Surface waters with one hundred (100) foot buffer:

Peatlands: Due to their rarity and fragility, these unique wetlands shall be protected by a one hundred (100) foot buffer.

G. Comprehensive Shoreland Protection Act

Osgood Pond and the Souhegan River shall also be subject to the Comprehensive Shoreland Protection Act, New Hampshire RSA 483-b as may be amended from time to time. The Comprehensive Shoreland Protection Act addresses activities within two hundred and fifty (250) feet of great ponds and fourth order streams. The Souhegan River is a fourth order stream.

6.024 DEFINITIONS

Bank/Edge of Wet: the transitional slope immediately adjacent to the edge *of* a surface water body, the upper limit of which is usually defined by a break in slope, or, for a wetland, where a line delineated in accordance with Wetland Bureau Code of Administrative Rules Chapter Wt 301.01 indicates a change from wetland to upland.

Buffer: an upland area adjacent to a wetland and/or surface water which serves to filter surface water flowing into the wetland.

Bog: a wetland distinguished by stunted evergreen trees and shrubs, peat deposits, poor drainage, and/or highly acidic soils and/or water conditions.

Great Pond: Any natural water body having an area of ten (10) acres or more.

Fen: unique wetlands characterized by saturated organic soils (well-decomposed peat) fed by neutral to somewhat alkaline groundwater.

Marsh: a wetland that is distinguished by the absence of trees and shrubs, which is dominated by soft-stemmed herbaceous plants such as grasses, reeds, and sedges; and where the water table is at or above the surface throughout the year, but can fluctuate seasonally.

Peatlands: wetlands with thick organic soil, often with a characteristic floating mat of mosses, sedges, shrubs, and/or trees in very acidic conditions, includes bogs and fens.

Stream, Intermittent: a place where water flows for sufficient duration and/or in sufficient quantity to maintain a channel.

Stream, Perennial: any channel, natural or man made, which has water present for twelve (12) months of a normal year but which may dry up during a period in which the rainfall is less than sixty (60) per cent of average for more than three consecutive months.

Surface water: perennial and intermittent streams, lakes, ponds, marshes, watercourses, and other bodies of water, natural or artificial.

Very poorly drained: water is removed from the soil so slowly that free water remains at or on the surface during most of the growing season.

Wetland: an area that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support and that under normal conditions does support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

6.025 A SPECIAL EXCEPTION IS NOT REQUIRED FOR:

- A. **Wetlands:** Any of the following uses that do not alter the surface configuration by the addition of fill, removal of soil, or obstruct in any manner the natural flow of ground or surface water, or disturb in any manner the ground itself to any depth and that are otherwise permitted by the Zoning Ordinance.
1. Projects that fall under the Wetland Bureau's Minimum Impact Expedited Permit Application. These projects, however, must be reviewed by the Conservation Commission prior to approval by the Wetlands Bureau.
 2. Repair or reconstruction of an existing legal structure that meets the following conditions:
 - a. Where the size, location and configuration remain the same
 - b. There shall be no work on any portion of the structure located in wetlands and/or surface waters.
 - c. The work shall not require the utilization of tracked or wheeled equipment in the water or wetland;
 - d. The structure has not been abandoned. Failure to maintain an existing structure in a state so that it is functional, and intact, for a period of five (5) years shall be prima facie evidence of abandonment or non-use.
 3. Mowing or cutting of vegetation in a wet meadow, red maple swamp, hemlock swamp, spruce/fir swamp, or white pine swamp, provided that the roots of the vegetation are not disturbed, and that the ground is frozen or sufficiently dry to avoid making ruts and that the area is stabilized once thawed and that the project is not located in prime wetlands.
 4. Hand raking of leaves or other organic debris from the shoreline or lake bed provided that:
 - a. At the time raking is done, the area is exposed by draw down, or
 - b. Raking does not disturb vegetative roots and is limited to less than nine-hundred (900) square feet of area.
 5. Removal of a beaver dam by hand or machine provided:
 - a. Machinery does not enter the water or create any impact by filling or dredging to adjacent surface waters, wetlands, or their banks;
 - b. All dredged materials are placed out of wetlands and out of the defined buffer area, and
 - c. Removal of the dam is done in a gradual manner that does not allow a sudden release of impounded water to cause erosion or siltation.
 6. Addition of native vegetation to enhance wetlands, but not the removal of wetlands vegetation except as provided in 6.025-A:3.
 7. Drilling of test wells by a public agency for purposes of exploring for public water supplies or hazardous materials.
 8. Other activities as noted in NH Wetlands Bureau Code of Administrative Rules Wt. 303.05.
- B. **Buffer Zones:** Any of the following uses that do not alter the surface configuration by the addition of fill, removal of soil, or obstruct in any manner the natural flow of ground or surface water, or disturb in any manner the ground itself to any depth and that are otherwise permitted by the Zoning Ordinance.

1. All projects as described in the Wetland Bureau's Minimum Impact Expedited Permit Application
2. Buildings and structures not to exceed one hundred twenty (120) square feet and without sanitary plumbing and raised above-ground on concrete or similar blocks placed on the ground surface in such a manner as to permit the natural flow of any surface water,
3. Decks raised above the ground so as to permit the natural flow of any surface waters,
4. Potable water supply wells and their associated water lines and associated power lines, provided there are adequate erosion control measures in place during work and repair of any disturbance,
5. Monitoring wells for observation purposes, provided there are adequate erosion control measures in place during work and there is repair of any disturbance,
6. Forestry and tree farming in accordance with good silvicultural practices,
7. Agriculture, including growing and harvesting of crops.

6.026 A SPECIAL EXCEPTION IS REQUIRED FOR:

- A. Wetland: Any project that requires a NH Wetlands Bureau Standard Dredge & Fill Permit and is not in the right-of-way of a public road, shall require a Special Exception from the Milford Zoning Board of Adjustment.

Standard Dredge & Fill Permit is required if the proposed work includes any one or more of the following:

1. Temporary or permanent construction in a bog, marsh, or Atlantic white cedar swamp.
2. Dredge or fill for the purpose of creating a buildable lot. This does not include driveway crossings.
3. Fill to obtain adequate setback under NH DES subsurface systems bureau rules.
4. Impact of fifty (50) or more linear feet, measured along the shoreline, of a lake or pond or its bank.
5. Alteration of the course of or disturbance of fifty (50) or more linear feet, measured along the thread of the channel, of an intermittent stream channel or its banks or construction during periods when the stream is flowing.
6. Combined temporary and permanent impacts of more than three thousand (3,000) square feet in a swamp or wet meadow.
7. Relates to other work done on the property within the last twelve (12) months which, when taken in aggregate, would exceed minimum impact criteria.
8. Any work within a wetland on the property that has already begun or was previously completed without a permit.
9. Dredge or fill in a great pond.
10. Work in a perennial stream.

- B. Buffer: a Special Exception is required for:
Any project not listed in 6.025 that involves the impact of more than three thousand (3000) square

feet of buffer, and is not in the right-of-way of a public road, shall require a Special Exception from the Milford Zoning Board of Adjustment.

- C. The Board of Adjustment, in acting on an application for a special exception in the Wetlands Conservation District, shall take into consideration the conditions as noted in 10.021.
- D. The Board of Adjustment may grant a Special Exception for such projects after the application for the Special Exception has been reviewed and reported upon by the Milford Conservation Commission and forwarded to the Board of Adjustment within forty (40) days of a public meeting at which the Conservation Commission first received detailed plans on the project.
- E. The Planning Board may also be required to submit a report to the Board of Adjustment, if requested by the Board of Adjustment. The Planning Board shall submit its report within the above specified forty (40) day period.

6.027 CRITERIA FOR EVALUATION

- A. For all projects requiring a Special Exception the applicant shall demonstrate by plan or example that the following factors have been considered in their design:
 - 1. The need for the proposed project;
 - 2. The plan proposed is the alternative with the least impact to the wetlands, surface waters and/or their associated buffers;
 - 3. The impact on plants, fish and wildlife;
 - 4. The impact on the quantity and/or quality of surface and ground water;
 - 5. The potential to cause or increase flooding, erosion, or sedimentation;
 - 6. The cumulative impact that would result if all parties owning or abutting a portion of the affected wetland, wetland complex and/or buffer area were also permitted alterations to the wetland and buffer proportional to the extent of their property rights;
 - 7. The impact of the proposed project on the values and functions of the total wetland or wetland complex.
- B. The Town of Milford shall place emphasis in preserving peatlands and marshes. This priority shall be based upon the rarity of those environments and the difficulty in restoration of the value and function of those environments.

6.030 FLOODPLAIN MANAGEMENT DISTRICT

6.031 PURPOSE

It is the purpose of this Ordinance to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas of the Town of Milford by the establishment of standards designed to:

- A. Protect human life and public health;
- B. Minimize expenditure of money for costly flood control projects;
- C. Minimize the need for rescue and relief efforts associated with flooding;
- D. Minimize prolonged business and employment interruptions;
- E. Minimize damage to public facilities and utilities;
- F. Help maintain a stable tax base;
- G. Insure that purchasers of property are notified of special flood hazards; and
- H. Insure that persons who occupy areas of special flood hazard assume responsibility for their actions.

To insure continued eligibility of owners of property in the Town of Milford for participation in the National Flood Insurance Program pursuant to the rules and regulations published in the Federal Register (Vol. 41, Number 207, 10/26/76).

I Area Of Applicability

This Ordinance is applicable to the "Special Flood Hazard Areas" which are delineated on map entitled "Flood Insurance Rate Map and Urban Development Federal Insurance Administration", and as such, zones may be amended from time to time by such administration, which map is hereby made a part of this Ordinance and is hereinafter referred to as "Flood Insurance Map".

J Basis

Said map is based on a document entitled "Flood Insurance Study, Town of Milford, New Hampshire" prepared by the U.S. Department of Housing. Urban Development Federal Insurance Administration including a "Flood Way Map" and the "Flood Insurance Rate Map" effective May 1, 1980 which is a part of such document.

K Requirement

Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, may be made within the "Special Flood Hazard Area" only in accordance with the requirement of this Ordinance.

L Other Restrictions

This Ordinance is not intended to repeal, abrogate or impair any easements or other laws, regulations or ordinances, and whichever imposes the more stringent restrictions shall prevail.

M Interpretation

In the interpretation and application of this Ordinance, all provisions shall be considered as minimum requirements and shall be construed so as to preserve and maintain the purpose and intent hereof.

N Warning and disclaimer of liability

The degree of flood protection established by this Ordinance is considered reasonable for town wide regulatory purposes and is based on available scientific and engineering studies. Larger floods may occur on rare occasions, and flood heights may increase as a result of man-made or natural causes. This Ordinance does not imply that land outside of "Special Flood Hazard Areas" will be free from flooding or flood

damages. This Ordinance shall not create liability on the part of the Town of Milford, any officer or employee thereof or the Federal Insurance Administration for any flood damages that result from reliance on this Ordinance or any administrative decision lawfully made hereunder.

6.032 DEFINITIONS

Certain terms and phrases used in this Ordinance are hereinafter defined and explained. Otherwise, the words in this Ordinance shall have the meaning commonly attributed to them.

Area of shallow flooding - As designated AO or AH zone on a community's flood insurance rate map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Area of special flood hazard - The land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. The area may be designated as Zone A on the FHBM. After detailed rate making has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zones A, AO, AH, AL-30, AE and A99.

Base flood - The flood having a one percent chance of being equaled or exceeded in any given year.

Basement - Any area of the building having its floor subgrade (below ground level) on all sides.

Building - See "structure"

Breakaway Wall - A wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or supporting foundation,

Development - Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operation,

FEMA - Federal Emergency Management Agency (1996)

Flood or Flooding - (1996)

1. The overflow of inland or tidal waters; and
2. The unusual and rapid accumulation or runoff of surface waters from any source.

Flood Boundary and Floodway Map (Floodway) - An official map of the community, on which the Federal Emergency Management Agency has delineated the "Regulatory Floodway". This map should not be used to determine the correct flood hazard zone or base flood elevation, the Flood Insurance Rate Map (FIRM) will be used to make determinations of flood hazard zones and base flood elevations.

Flood Elevation Study - An examination evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mud slide (i.e. mud flow) and/or flood related erosion hazards.

Flood Hazard Boundary Map (FIRM) - An official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the flood, mud slide (i.e. mud flow) related erosion areas having special hazards have been designated as zones A, M and/or E.

Flood Insurance Rate Map (FIRM) - An official map of a community, on which the Federal Emergency Management Agency has delineated both the special hazard areas and the risk premium zones applicable to the community.

Flood Insurance Study - See "Flood Elevation Study",

Floodplain or Flood Prone Area - Any land area susceptible to being inundated by water from any source (See definition of "Flooding"),

Floodproofing - any combination of structural and non-structural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Floodway - See "Regulatory Floodway"

Functional Dependent Use - A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

Highest Adjacent Grade - the highest natural elevation of the ground surface prior to construction next to the proposed wall of a structure.

Historic Structure - any structure that is: (1996)

- A. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- B. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the secretary to qualify as a registered historic district;
- C. Individually listed on a State Inventory of Historic Places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- D. Individually listed on a local Inventory of Historic Places in communities with historic preservation programs that have been certified either:
 1. By an approved state program as determined by the Secretary of the Interior; or
 2. Directly by the Secretary of the Interior in states without approved programs.

Lowest Floor - The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this Ordinance.

Manufactured Home - A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term "manufactured home" also includes park trailers, travel trailers and other similar vehicles placed on a site for greater than 180 consecutive days. For insurance purposes the term "manufactured home" does not include park trailers, travel trailers or other similar vehicles.

Manufactured Home Park or Subdivision - A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Mean Sea Level - For purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's flood insurance rate map are referenced.

100-year Flood - See "Base Flood"

Recreational Vehicle - a vehicle which is:

- A. Built on a single chassis;
- B. Four hundred (400) square feet or less when measured at the largest horizontal projection;

C. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use. (1994)

Regulatory Floodway - The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot at any point. These areas are designated as Floodways on the Flood Boundary and Floodway Maps.

Riverine - Relating to, formed by or resembling a river (including tributaries), stream, brook, etc.

Special Flood Hazard Area - An area having special flood, mud slide (i.e. mud flow) and/or flood related erosion hazards and shown on a FHBM or FIRM as Zone A, AO, AS-30, AE, A99, AH, M or E (See area of Special Flood Hazard)

Start of Construction - Includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement was within one hundred-eighty (180) days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; or does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

Structure - For floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home.

Substantial Damage - Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal fifty (50) per cent of the market value of the structure before the damage occurred. (1996)

Substantial Improvement - Any combination of repairs, reconstruction, alteration or improvements to a structure in which the cumulative cost equals or exceeds fifty percent of the market value of the structure. The market value of the structure should be 1) the appraised value of the structure prior to the start of the initial repair or improvement, or 2) in the case of damage, the value of the structure prior to the damage occurring. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration affects the external dimensions of the structure. The terms does not, however, include any project for improvement of a structure required to comply with existing health, sanitary or safety code specifications which are solely necessary to assure safe living conditions or any alteration of a structure listed on the national register of historic places.

Water Surface Elevation - The height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 (or other datum, where specified) of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

6.033 PERMITS

- A. All proposed developments in any special flood hazard areas shall require a permit.
- B. The building inspector shall review all building permit applications for new construction or substantial improvements to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is in a flood prone area, all new construction and substantial improvements shall (i) be designed (or modified) and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, (ii) be constructed with materials resistant to flood damage, (iii) be constructed by methods and practices that minimize flood damages and, (iv) be constructed with electrical, heating, ventilation, plumbing and air

conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

- C. Where the new and replacement water and sewer systems (including on-site systems) are proposed in flood prone areas the applicant shall provide the building inspector with assurance that new and replacement sanitary sewage systems will be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and on-site waste disposal systems will be located to avoid impairment to them or contamination from them during periods of flooding.
- D. The building inspector shall maintain for public inspection, and furnish upon request, any certification of floodproofing and the as-built elevation (in relation to mean sea level) of the lowest flood (including basement) of all new or substantially improved structures, and include whether or not such structures contain a basement. If the structure has been floodproofed, the as-built elevation (in relation to mean sea level) to which the structure was floodproofed. This information must be furnished by the applicant.
- E. The building inspector shall review proposed developments to assure that all necessary permits have been received from those governmental agencies from which approval is required by federal or state law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334. It shall be the responsibility of the applicant to certify these assurances to the building inspector.
- F. In riverine situations, prior to the alteration or relocation of a watercourse, the applicant for such authorization shall notify the Wetlands Board of the New Hampshire Environmental Services Department and submit copies of such notification to the building inspector. Further, the applicant shall be required to submit copies of said notification to those adjacent communities as determined by the building inspector.

Within the altered or relocated portion of any watercourse, the applicant shall submit to the building inspector, certification provided by a registered professional engineer assuring that the flood carrying capacity of the watercourse has been maintained.

Along watercourses that have a designated regulatory floodway no encroachments, including fill, new construction, substantial improvements and other development are allowed within the designated regulatory floodway that would result in any increase in flood levels within the community during the base flood discharge. In Zone A the building inspector shall obtain, review and reasonably utilize any floodway data available from a federal, state or other source as criteria for requiring that development meet the floodway requirements of this section.

Along watercourses that have not had a regulatory floodway designated, no new construction, substantial improvements or other development (including fill) shall be permitted within Zones AL30 and AE on the FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

6.034 CRITERIA

- A. In special flood hazard areas the building inspector shall determine the one hundred (100) year flood elevation in the following order of precedence according to the data available:
 - 1. In Zones AL-30, AH & AE refer to the elevation provided in the communities flood insurance study and accompanying FIRM or FHBM.
 - 2. In unnumbered A zones the building inspector shall obtain, review and reasonably utilize any one hundred (100) year flood elevation data available from federal, state, development proposals submitted to the community (example subdivisions, site approvals, etc.) or other source.
 - 3. In Zone AO, the one hundred (100) year flood elevation is determined by adding the elevation of the highest adjacent grade to the depth number specified on the FIRM or if no depth number is specified on the FIRM at least two (2) feet.

- B. The building inspector's one hundred (100) year flood elevation determination will be used as criteria for requiring in Zones A1-30, AE, AH, AO and A that:
1. All new construction and substantial improvements of residential structures have the lowest floor (including basement) elevated to or above the one hundred (100) year flood level;
 2. At all new construction and substantial improvements of non-residential structures have the lowest floor (including basement) elevated to or above the one hundred (100) year flood level; or together with attendant utility and sanitary facilities, shall:
 - a. Be floodproofed so that below the one hundred (100) year elevation the structure is watertight with walls substantially impermeable to the passage of water;
 - b. Have structural components of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and
 - c. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section.
 3. All manufactured homes to be placed or substantially improved within special flood hazard areas shall be elevated on a permanent foundation such that the lowest flood of the manufactured home is at or above the base flood level; be securely anchored to resist flotation, collapse or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.
 4. For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding are permitted providing the enclosed areas meet the following requirements: (1) the enclosed area is unfinished or flood resistant, usable solely for parking of vehicles, building access or storage; (2) the area is not a basement; (3) shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria: a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers or other coverings or devices provided that they permit the automatic entry and exit of floodwaters;
 5. Proposed structures to be located on slopes in special flood hazard areas, zones AH and AD shall include adequate drainage paths to guide flood waters around and away from the proposed structures.
 6. Recreational vehicles placed on sites within Zones ZL-30, AH and AE shall either: (1) be on the site for fewer than one hundred twenty (120) consecutive days, (11) be fully licensed and ready for highway use, or (111) meet all standards of Section 61.3 (B1) of the National Flood Insurance Program Regulations and the elevation and anchoring requirements for "manufactured homes" in Paragraph (c) (6) of section of 60.3. (1994)

6.035 APPEALS AND VARIANCES

- A. The Zoning Board of Adjustment of the Town of Milford shall hear and decide Appeals and Requests for Variances from the standards of the Ordinance. Such Board shall have the following duties:
1. To hear and decide appeals when it is alleged there is an error in any requirement, decision or determination made by the town engineer or consultant in the enforcement and administration of this Ordinance,

2. To issue variances from the standards of this Ordinance under the general considerations set forth in Section 6.035.B and conditions for variance specified in section 6.035.C and
3. To issue variances for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places and the New Hampshire State Inventory of Historic Places without regard to the consideration and conditions of Para. 6.035.B and 6.035.C

B. General Considerations

In passing upon applications for variance, the Zoning Board of Adjustment shall consider:

1. The technical evaluations and studies that are the basis for this Ordinance.
2. The standards of this Ordinance and the following:
 - a. The danger that materials may be swept onto other lands to the injury of others,
 - b. The danger to life and property due to flooding or erosion damage;
 - c. The susceptibility of the proposed development and its contents to flow damage and the effect of such damage on the individual owner;
 - d. The importance of the services provided to the community by the proposed development;
 - e. The necessity of a waterfront location for the function of the development;
 - f. The availability of alternative locations for the proposed development which are not subject to flooding or erosion damage;
 - g. The compatibility of the proposed development to the plan of development for the town and the floodplain management program for that area;
 - h. The relationship of the proposed development to the plan of development for the town and the floodplain management program for that area;
 - i. The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - j. The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected to the site; and
 - k. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems and streets and bridges.

C. Conditions For Variance

The following are conditions applicable to the issuance of variances by the Zoning Board of Adjustment.

1. No variance shall be issued within a floodway if any increase in flood levels during the base flood discharge will result,
2. Otherwise, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in area when the lot is contiguous to and generally surrounded by lots with existing structures constructed below the base flood elevation, provided that the following criteria are met:
 - a. Showing a good and sufficient cause,
 - b. A determination that failure to grant the variance would result in exceptional hardship to the applicant, and
 - c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, use fraud on or victimization

of the public, or conflict with other existing town laws, ordinances and regulations. Variances shall only be issued upon determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

- d. When issuing a variance, the Board may attach such conditions that it deems necessary to further the purpose and intent of this Ordinance.

6.036 EFFECTIVE DATE AND FILING

A variance issued under this Ordinance shall become effective at such time as is fixed by the Zoning Board of Adjustment, provided a copy thereof shall be filed in the office of the Milford town clerk and in the land records of the Town of Milford in the same manner as required for filing the variances from zoning regulations.

6.037 NOTICES AND RECORDS

The town engineer or consultant shall notify the applicant for a variance in writing that:

- A. The issuance of a variance to construct a structure below the base flood elevation will result in increased premiums for flood insurance (Federal Register of October 26, 1976: increased premium rates for flood insurance may be as much as twenty-five (25) dollars for two hundred (200) dollars of insurance coverage, and
- B. Such construction below the base flood elevation increases risks to life and property. The Town shall maintain a record of all variance actions including the justification for their issuance and shall report such variances issued in his annual report to the Federal Insurance Administration.

6.038 APPEAL TO COURT

Any person or persons severally or jointly aggrieved by any decision of the Zoning Board of Adjustment acting under this Ordinance, or any person owning land which abuts or is within a radius of one hundred (100) feet of any portion of the land involved in any decision of said Board, or any office, board or commission of the Town of Milford, having jurisdiction or responsibility over flood hazards in the town, may take an appeal to the superior court of the county of judicial district in which such municipality is located in the same manner as provided under provisions of Section 8-8 to the General Statutes of the State of New Hampshire (3/10/81 - adopted by the Town of Milford).

6.040 OPEN SPACE AND CONSERVATION ZONING DISTRICT (2004)

6.041 PURPOSE

- A. To create permanently protected open space without decreasing the allowable density of the site;
- B. To promote the preservation of and to minimize the negative impact on environmental resources, including but not limited to: streams, ponds, floodplains, wetlands, steep slopes, scenic views, open fields, farmland, wildlife habitat, habitat of rare and endangered species, and historic sites and features;
- C. To enhance the quality of life with the provision of space for walking, passive recreation, and aesthetic enjoyment;
- D. To provide for low impact active recreational opportunities, where appropriate. Low impact, for the purpose of this ordinance, shall preclude formal recreation fields or structures intended for year round use;
- E. To provide greater flexibility and efficiency in the siting and design of roads and services;
- F. To discourage sprawling, land consuming forms of development.

6.042 GENERAL REGULATIONS

- A. Any plan submitted under the Open Space and Conservation Zoning District section of the Town of Milford's Zoning Ordinance (hereinafter Open Space Preservation Design or OSPD) shall mean a development in which the provisions of this Section are met.
- B. All Open Space shall be dedicated as permanently preserved from future development.
- C. The overall density shall not exceed that which would be allowed in the underlying district.
- D. Open Space set asides are ineligible as contributing land area in any subsequent development.
- E. Permitted uses are the same as those allowed in the underlying district.

6.043 LOCATION AND SCOPE OF AUTHORITY

- A. The Open Space and Conservation Zoning District is an overlay district which imposes additional requirements and restrictions to those of the underlying base district established under the powers granted under NH RSA 674:21. In cases of conflict between the requirements of this district and the requirements presented elsewhere in the Town of Milford's Zoning Ordinance, the provisions of this District shall apply.
- B. All subdivisions of land into five (5) or more residential lots, or developments of five (5) or more dwelling units, must incorporate the criteria in OSPD, except as set forth below. The Planning Board will examine the subdivision proposal using the list of resources desirable for preservation (see Open Space Design 6.044:D.1) to ensure that the proposed open space is consistent with the criteria set forth and the purpose of the District. At the discretion of the Planning Board, and if the proposed development does not meet the criteria, the development may be required to incorporate the criteria of a conventional subdivision as permitted by the underlying zoning district.
- C. Properties with subdivision proposals of four (4) or fewer residential lots or for development of four (4) or fewer dwelling units, will be examined by the Planning Board using the list of resources desirable for preservation (see Open Space Design 6.044:D.1). At the discretion of the Planning Board, these developments may be required to incorporate the criteria in OSPD.
- D. Developments of four (4) or fewer lots, or four (4) or fewer dwelling units, that have not been identified by the Planning Board as needing to comply with OSPD, are exempt from the OSPD requirement, provided there is no potential for further subdivision or development of any lots or dwelling units therein or of the parcel from which the four (4) or fewer lots or dwelling units have been subdivided.

- E. Residential subdivisions of land in any District, where each lot is at least 5 times the size required in the underlying district, shall be exempt from OSPD requirements, provided the deed and the subdivision plan for each lot(s) contains a restriction prohibiting the further subdivision of the lot(s).
- F. When a subdivision or development is proposed which includes a lot(s) which may be capable of further subdivision or development, the Planning Board may require that a conceptual, long range plan for the entire parent parcel be presented so that the Board may consider the entirety of a parcel and its impacts. This long-range plan is non-binding. Any future development of the lot or lots will be reviewed by the Planning Board with reference to this long-range plan.

6.044 OPEN SPACE DESIGN

- A. Every OSPD shall avoid or minimize adverse impacts on the town's natural, cultural and historic resources by incorporating permanently protected Open Space into the design.
- B. The Minimum Required Open Space for all OSPD's is thirty (30) percent of the gross tract area.
- C. Of the minimum required Open Space one hundred (100) percent must consist of non-wetland soils and soils with slopes less than twenty-five (25) percent. Open Space dedicated in excess of the minimum required area may contain any percentage of wetland soils or steep slopes. If the OSPD is a Senior Housing Development, as defined in Section 7.070 of the Zoning Ordinance, the green space requirements of Section 7.074.E shall apply.
- D. Design Standards:
 - 1. List of Resources to Consider for Preservation:
 - a. Open water, waterways, stream channels, floodplains and very poorly drained soils, including adjacent buffer areas as defined in 6.020 Wetland Protection District;
 - b. The habitat of species listed as endangered, threatened, or of special concern by the NH Natural Heritage Inventory and/or by the NH Fish & Game Department's Non-game & Endangered Wildlife Program;
 - c. Moderate slopes, fifteen to twenty-five (15-25) percent, and steep slopes, greater than twenty-five (25) percent, particularly those adjoining water courses and ponds.
 - d. Prime (Federal designation) and Important (State designation) Agricultural Soils, as shown on the Agricultural Soils Map in the current Milford Conservation Plan;
 - e. Historic sites and features;
 - f. Existing or planned trails connecting the tract to other locations, including, but not limited to, the trails on the Town Wide Trails Map maintained by the Milford Conservation Commission of formal and informal trails;
 - g. Other space or resources as required by the Planning Board for recreational use consistent with Section 6.041.
 - 2. Design and Use considerations for preserved Open Space:
 - a. The preserved open space shall include as many of the resources listed in Section 6.044.C.1 (Resources to Consider for Preservation) as practical;
 - b. The preserved open space shall be free of all structures except historic sites, features, and structures related to permitted open space uses;
 - c. Subsurface disposal systems may not be placed in the preserved open space;
 - d. Water supplies may be placed in the preserved open space;

- e. Stormwater management systems may, at the discretion of the Planning Board, be placed in the preserved open space;
- f. Preserved open space shall, unless privately owned, be accessible to the lots or units within the development, and to the general public if publicly owned;
- g. Narrow open space strips shall not be permitted unless the incorporation of the open space strips provides a logical and practical link to, or expansion of, either existing or known planned adjacent preserved open space;
- h. Preserved open spaces shall be interconnected wherever possible to provide a continuous network of open space lands within and adjoining the development;
- i. Public access, regardless of ownership, shall be provided to trails if they are linked to other publicly accessible pathway systems.

E. Protection and Ownership:

- 1. All open space shall be permanently protected by a conservation easement or by covenants and restrictions in perpetuity, approved by the Planning Board after review by the Conservation Commission. The Planning Board may require further legal review of any documents submitted, the cost of which shall be borne by the applicant. Ownership of the open space may be held by:
 - a. A homeowners association or other legal entity under New Hampshire State Statutes, or
 - b. Private ownership, protected by a conservation easement and limited to not-for-profit parks, and not-for-profit recreation areas or commercial agriculture and forestry; or
 - c. A non-profit organization, the principal purpose of which is the conservation of open space; or
 - d. The Town of Milford, through the deeding process, subject to approval of the Planning Board and Board of Selectmen, with a trust clause insuring that it be maintained as open space in perpetuity.
- 2. Open space ownership shall be at the discretion of the Board of Selectmen, in consultation with the Planning Board, Conservation Commission and other Town Boards and Departments as deemed necessary. The Planning Board will be responsible to provide a recommendation on ownership of the preserved open space to the Board of Selectmen for its consideration and acceptance.

6.045 DENSITY AND DIMENSIONAL STANDARDS

A. Density:

- 1. The density of the proposed development shall be equal to or less than the density allowed in a conventional development;
- 2. The maximum density of the proposed development shall be established by a preliminary plan showing the number of lots or units which could be constructed in a conventional subdivision without any special exceptions and/or waivers for lot frontage, area, road and driveway grades, dead-end road length, and soil types suitable for subsurface disposal systems (if used).

B. Dimensional Standards:

- 1. Lot size, frontage, and setbacks will be project specific and are subject to the approval of the Planning Board. Individual lot size, frontage, building envelopes, and setbacks shall be tabulated on the plan. At its discretion, the Planning Board may waive Sections 6.045.B.2, 3, and 4 relative to frontage and setback requirements.
- 2. The minimum lot frontage shall be fifty (50) feet.

3. The minimum lot width with the building envelope shall be seventy-five (75) feet. For the purpose of this section of the Zoning Ordinance, the building envelope shall be defined as the building area to fifteen (15) feet outside of the proposed building footprint, including attached walkways, porches, decks, retaining walls, and other such appurtenances that are necessary or desired for construction of the building.
4. The building shall be setback at least thirty (30) feet from the front and rear property lines. The building shall be at least fifteen (15) feet from the side property lines.
5. Village Plan alternatives as outlined in RSA 674:21.VI shall be permitted. No increase in density will be permitted.
6. All lots and/or structures within the OSPD, built adjacent to a perimeter boundary of the development or with frontage on or adjacent to an existing public road shall conform to all building setbacks and lot frontages as required in the underlying zoning district.
7. The Planning Board may require site plans for individual lots containing slopes greater than fifteen (15) percent, soils rated as having "severe" limitations for septic systems if not on municipal sewer (as determined by the USDA), and very poorly drained soils.

ARTICLE VII: SUPPLEMENTARY STANDARDS

7.010 GRAVEL/EARTH PRODUCTS REMOVAL

Loam, sand, gravel and similar earth materials may be removed from a lot or land area in Zoning Districts which allow such only after a permit for earth removal has been issued by the Planning Board. All applications for gravel/earth products removal shall be in conformance with the conditions set forth in NH RSA Chapter 155-e and the Town of Milford's Gravel Removal of Earth Products Permit regulation and may be amended from time to time and shall be accompanied by a fee of fifty (50) dollars plus the cost of postage for notification of abutters. Such permit shall be renewed annually at a fee of fifty (50) dollars. (1985)

7.020 ON-SITE SEWAGE DISPOSAL SYSTEMS

7.021 No septic tank, leach field, or other on-site sewage disposal system shall be constructed or enlarged within twenty five hundred (2500) feet of any well of the Milford Town Water System subject to the following exceptions:

- A. On-site sewage disposal systems for one and two family residences shall be permitted.
- B. On-site sewage disposal systems for the treatment of organic wastes with flow not in excess of one thousand (1000) gallons per twenty-four (24) hour period shall be permitted, however only one disposal system shall be permitted on each parcel of land held in single ownership.
- C. The Board of Adjustment, after proper public notice and public hearing, may grant a Special Exception for the installation or modification of an on-site sewage disposal system within twenty-five hundred (2500) feet of a town well, when it is satisfied that no pollution of any town well shall result from the action. The application for a Special Exception shall include a written report(s) prepared by a licensed professional engineer, ground water geologist and/or hydrologist, who has been approved in advance by the Board. This report shall be based on on-site inspections, testings, and/or scientific analysis of the ground water transmigration. The report(s) shall include an analysis of the type of pollutants to be introduced into the disposal system, the maximum daily flows that are anticipated, soil types, and other relevant engineering and soils factors. All costs for the preparation of the required reports and any on-site testing shall be borne by the applicant for the Special Exception.
- D. On-site sewage disposal systems shall be permitted when the disposal system is located on one side of a river, stream or other body of water which has a year round flow and the town well is located on the other side.

7.022 However, in no case shall any on-site sewage disposal system be constructed or enlarged within four hundred (400) feet of a town well.

7.030 CLUSTER OPEN SPACE DEVELOPMENT DELETED (2000)

7.040 PRIVATE WAYS DELETED (2001)

7.050 EXISTING MANUFACTURED MOBILE HOME PARKS

7.051 ALLOWABLE USES (1992)

- A. Additions to manufactured housing in existing manufactured home parks shall be allowed when it can be shown that adequate water and sewer facilities exist.

7.052 ALLOWABLE USES IN THE INDUSTRIAL DISTRICT BY SPECIAL EXCEPTION

Any manufactured housing park in existence at the time of the passage of this Ordinance that has a minimum of thirty (30) units may expand subject to the limitations contained herein and provided the Board of Adjustment has approved a Special Exception for such expansion pursuant hereto.

The Board of Adjustment in determining whether such a park is entitled to a Special Exception to expand shall apply the following criteria:

- A. The proposed shall only apply to a park with municipal water and sewer service or one which has received permission from the Selectmen to construct such water and sewer services at the park owner's expense;
- B. The proposed shall include a commitment to improve all existing and contemplated roads within the park to such standards as required by the Selectmen for current road improvements;
- C. The Board of Adjustment shall determine that there exists or will be provided, parks, playgrounds, open green space or other amenities sufficient to provide for existing and proposed occupants of the park;
- D. The Board of Adjustment shall determine the extent to which the park shall be allowed to expand provided that they shall not approve any expansion that will result in a total park density greater than the existing multi-family housing density in the Town;
- E. The Board of Adjustment shall consider the proposed expansion and may impose any reasonable conditions on the grant of the Special Exception which are, in the judgment of the Board of Adjustment, necessary to insure that the proposed expansion meets the above criteria, the general criteria for a special exception (set forth in article X, para. 10.020 of the Ordinance) and also provide for the safety of existing and further occupants in terms of fire safety, flooding, traffic and any other appropriate considerations.

It is understood that once a Special Exception is granted hereunder the applicant will thereafter present a Site Plan to the Planning Board in accordance with existing Site Plan Review Regulations. All required improvements will be bonded as normally required.

A joint meeting of the Planning Board and Board of Adjustment is permissible if said boards concur. (1989)

7.060 SIGN ORDINANCE (1993)

7.061 PURPOSE AND INTENT

This Ordinance is passed pursuant to the authority set forth in RSA 674:17. It is the purpose of this Ordinance to further the purposes set forth in said Statute and, to that end, to lessen congestion in the streets, to promote health and the general welfare, to prevent the overcrowding of land, to preserve the character of the area to which this Ordinance applies as well as the areas peculiar suitability for particular uses and particularly with a view to conserving the value of buildings and encouraging the most appropriate use of the land throughout the municipality.

In this regard it is the intent of this Ordinance to preserve the character of this community, preserve property values and esthetics wherever possible while balancing those important needs against the obvious need for commercial enterprises to have the ability to advertise their services and goods on-site in a way that is competitive with the industry in general while still advancing the purposes aforementioned.

7.062 GENERAL PROVISIONS

A. Permits

No sign, except yard sale, political (See 7.062 D-7) and real estate signs, may be placed upon a premise without a sign permit. Sign permit applications shall be submitted to the code administrator on such forms and contain such information as may be required.

B. Application procedure

The code administrator may adopt application procedures as he may find consistent with this Ordinance and pertinent law. No sign permit application shall be issued until all requirements of this Ordinance have been complied with.

An applicant for a sign permit is required to submit the following to the code administrator:

1. A completed sign permit application form.
2. A fee which shall be set by the Planning Board and may be subject to change from time to time.
3. A sketch of proposed sign that includes sign area, height, setback and location.
4. Information such as materials, illumination, animation, functions, electrical work required.

C. Violations

Any person and/or owner who violates this Ordinance may be subject to court action and penalties in accordance with NH RSA 676.

D. General Requirements

1. Any illuminated sign or lighting device shall employ only lights emitting a light of constant intensity and no sign visible from a public traveled way shall be illuminated by or contain flashing, intermittent or moving light(s). Time and temperature signs are allowed. These types of signs include message centers, reader boards, indexing signs and rotating signs.
2. In no event shall an illuminated sign or lighting device be so placed or directed so as to permit the beams and illumination therefrom to be directed or beamed upon a public street, highway, sidewalk or adjacent premises so as to cause glare or reflection that may constitute a traffic hazard or nuisance.
3. In no event shall the placement of a sign impair the sight distance of motorists passing, exiting or entering the property for which a sign permit has been issued, nor shall sight distance be impaired to neighboring properties. The standards outlined in Article V, Paragraph 5.040, Site Plan Regulations shall be adhered to.

4. A sign shall be maintained in good repair at all times for reasons of public safety and esthetics.
5. A sign shall not be placed within the Town of Milford's right-of-way.
6. The code administrator will be the enforcing agent for all sign permits.
7. Political signs are allowed without a permit, however, they first must be cleared by the code administrator. These signs must be removed within seventy-two (72) hours of the election and shall meet the provisions of NH RSA 664:17.

7.063 NON-CONFORMING SIGNS - ON AND OFF-PREMISE

A. Continuance

A non-conforming sign lawfully existing at the time of adoption of this Ordinance may continue.

B. Maintenance

A non-conforming sign must be maintained in good repair for reasons of public safety and esthetics.

7.064 ZONING

A. Residential (R, A, B) zones - the following signs shall be permitted in residential areas:

1. **Home occupation sign** - one sign allowed, either affixed or freestanding, showing name of occupants of the premises, or occupation or profession of the occupant of the premises on which the sign is located. The area may not exceed two (2) square feet and a maximum of five (5) feet above grade.
2. **Permanent subdivision identification sign** - (R/A zone) - one single or double faced ground sign is allowed per entrance into the development with a maximum of two (2) per development, signs may not exceed fifteen (15) square feet and six (6) feet above grade, with a ten (10) foot setback from the property line. Internally illuminated signs are prohibited.
3. **Multi-family residential Zone (B)** - one single or double-sided non-illuminated ground sign is permitted per premise, not to exceed fifteen (15) square feet and six (6) feet above grade. Internally illuminated signs are prohibited.

B. Limited Commercial-Business Zone - L-C - the following signs shall be allowed within the Limited Commercial Business District:

1. One freestanding sign shall be permitted per premise with a maximum height of fifteen (15) feet above grade and not exceeding fifty (50) square feet.
2. One wall/affixed sign per each tenant unit shall be allowed with a maximum of fifty (50) square feet or one projecting sign shall be allowed, not to exceed twenty-six (26) square feet.
 - a. If the property fronts on two town roads, then two wall/affixed signs may be allowed, however the combined square footage for the two signs shall not exceed fifty (50) square feet. An affixed and a projecting sign may be used together, but the total square footage shall not exceed what is permitted.

C. Commercial and Industrial Zones - the following signs only shall be permitted in commercial and industrial zones:

1. **Freestanding signs** - one sign allowed per premise. The maximum sign area shall be one hundred (100) square feet; the maximum height is not to exceed fifteen (15) feet above grade. Where a commercial district directly abuts a residential district, the sign shall not be located closer than fifty (50) feet from the property line.
2. **Affixed signs** - maximum sign area measured in square feet shall be two (2) times the store front width, measured in linear feet, if there is no other sign type on the premise; twenty-five (25) square feet or one and one-half (1 1/2) times, whichever is greater, if there is one (1) other sign type on the premises. A maximum of three (3) wall/affixed signs may be allowed per tenant unit however, the total square footage

permitted for the store front shall not exceed the total square footage permitted for that business. In no case shall a sign exceed one hundred (100) square feet.

3. **Projecting signs** - one projecting sign per tenant unit may be used instead of, but not in addition to, freestanding or roof signs. Any one business is permitted to have one projecting sign along any one public right-of-way. The maximum allowable sign area shall not exceed twenty-six (26) square feet, with a minimum height of eight (8) feet above grade to the bottom of the sign. Where a sign projects above a traffic area; such as a driveway, the minimum clearance shall be no less than fourteen (14) feet. Projecting signs shall not extend above the wall or the top of a parapet wall, whichever is higher. No part of a projecting sign shall extend beyond a vertical plane established at a distance of two (2) feet from the street edge of any curb.
4. **Roof signs** - one roof sign per building may be used when it is not feasible, as determined by the code administrator, to use either an affixed or projecting sign. Roof signs are subject to the following restrictions:
 - a. Maximum sign area measured in square feet shall be two (2) times the building frontage if there is no other sign type; twenty-five (25) square feet or one and one-half (1 1/2) times, whichever is greater, of the building frontage if there is a freestanding sign. No roof sign is to exceed one hundred (100) square feet. Roof signs shall not project above the peak of the roof. (mansard signs are considered to be roof signs)
5. The following sign types are also permitted within the commercial and industrial zones.
 - a. **Awning sign** - the total area of all awning signage shall not exceed that allowed for wall signs. A minimum of eight (8) feet above the adjoining way must be maintained for pedestrian clearance. No part of the awning sign shall extend beyond a vertical plane established at a distance of two (2) feet from the street edge of any curb.
 - b. **Canopy or marquee sign** - the copy area on such signs is computed as all or a portion of the allowed wall sign area. No part of a canopy or marquee sign shall extend beyond a vertical plane established at a distance of two (2) feet from the street edge of any curb.
 - c. **Directional sign** - these signs are allowed for on-site safety and convenience - not to exceed four (4) square feet and a maximum of three (3) feet above grade. Corporate emblems or logos on directional signs must be incidental and must not exceed thirty-three (33) percent of the total area of the sign. Directional signs located so as not to be viewed from a public right-of-way and set back a minimum of ten (10) feet from any property line shall not require a sign permit.
 - d. **Directory sign** - one (1) directory wall or ground sign may be located per building entrance or driveway access (excluding retail) with frontage on a street or parking area. Maximum area shall be one (1) square foot per tenant with a combined area not to exceed thirty-two (32) square feet and a maximum of six (6) feet above grade.
 - e. **Industrial/office park sign** - signs located adjacent to and intended to identify the entrance(s) to a multi-building park situated on a parcel(s) with a minimum of three (3) acres. One fifty (50) square foot sign is allowed. In both cases the signs shall be no higher than six (6) feet above grade.
 - f. **Real estate sign** - such signs shall not exceed thirty-two (32) square feet; no permit necessary.
 - g. **Temporary sign** - one temporary sign is allowed with a sign permit per premise, for a maximum of eighty-four (84) days per calendar year. The eighty-four (84) days may be used in weekly amounts. This allows for the issuing of a sequence of up to twelve (12) temporary sign permits per premise per calendar year. Each such temporary sign shall contain the issue date of the permit and the date of permit expiration on the copy side of the sign. All temporary signs must meet all provisions of the sign Ordinance for non-temporary signs.

- h. **Time and temperature sign** - permit required - this type of sign shall not be deducted from the total square footage calculation for the property or business and shall not exceed nine (9) square feet.
- i. **Under canopy sign** - no permit required - in multi-tenant strip plazas, one under canopy sign twelve (12) inch by forty-eight (48) inch is permitted. These signs are to be uniform in color, letter style and design.
- j. **Window signs** - no permit required - such signs shall not be flashing, intermittent or contain moving light.

7.065 THE OVAL DISTRICT

- This is the area of the town in front of the Town Hall known as "The Oval".
- It is the intent of this Ordinance to encourage a "historic" character in the downtown area in proximity to the Oval. This area, herein called the "Oval District" shall be comprised of lots bounded by and beginning at the intersection of Great Brook and the Souhegan River, preceding east along the southern bank of the Souhegan River to the south lot line of Tax Map 25, lot 99, proceeding west to Pine Street and then to the intersection with Nashua Street, continuing south along the west line of Franklin Street to its intersection with High Street, then preceding west along the south line of Lot 39 on Tax Map 25 to the southwest corner of that parcel (intersecting with Great Brook), and then preceding north along the east bank of Great Brook to the beginning.
- The following signs are permitted for each tenant unit:
 - A. **WALL/AFFIXED SIGNS** - Maximum sign area measured in square feet shall be one and one-half (1 1/2) times the building or store front, measured in linear feet, for a maximum of seventy-five (75) square feet. A 25 square foot sign will be allowed as a minimum.
 - B. **PROJECTING SIGNS** - Projecting signs are permitted in addition to wall signs. The maximum allowable sign area shall not exceed fifteen (15) square feet with a minimum height of eight (8) feet from the ground to the bottom of the sign. No part of a projecting sign shall extend beyond a vertical plane established at a distance of two (2) feet from the street edge of any curb.
 - C. **FREESTANDING** - One freestanding sign shall be permitted per premise with a maximum height of (15) fifteen feet above grade and not exceeding (50) fifty square feet.

7.066 OFF-PREMISE SIGNS

Off-premise signs are prohibited in the Town of Milford except as provided herein:

- A. An off-premise sign which identifies the name and location of a business located within Town, off a well traveled way and whose sole purpose is directional in nature, may be allowed by Special Exception from the Board of Adjustment provided that, in addition to the Special Exception conditions outlined in Article 10.021, the following conditions are met:
 - 1. No more than two off-premise signs shall be allowed on an individual parcel.
 - 2. No more than two off-premise signs shall be allowed per business.
 - 3. Signs within the Commercial, Industrial and Limited-Commercial Districts shall have a maximum square footage of twelve (12) square feet.
 - 4. The sign must otherwise conform to other applicable regulations of this bylaw.
 - 5. Other conditions or restrictions as the Board of Adjustment may deem to be in the public interest.
- B. Temporary Signs - Commercial District (1994)

In those cases in which a property lacks frontage (in the commercial zone) on a principal route of access, a temporary sign shall be allowed for a maximum of one hundred eighty (180) days. Commercial condominiums shall not be considered as lacking frontage. The temporary sign shall be located adjacent to the access way leading to the property lacking frontage. In addition, the owner allowing the non-frontage signage shall not be impaired from erecting their own temporary sign during the same time period.

7.067 DEFINITIONS

The following definitions shall apply throughout the Ordinance:

Area - The area, within a perimeter, which forms the outside shape of a sign. Where signs are established back-to-back, the larger area face shall be calculated for purposes of determining allowable area. The area of a sign having no such perimeter or border shall be computed by enclosing the entire copy area within the outline of either parallelogram, triangle, circle or any other easily recognized geometric shape when computing the area. Where a sign is of a three dimensional, round or irregular shape, the largest cross section shall be used in a flat projection for the purpose of computing sign area. The perimeter encompasses all support structures, protective and decorative canopies. These areas will not be included in the square footage requirements if no advertising is placed on them.

Affixed/wall/facia sign - A sign attached to, painted on, or established against the wall of a building with the face in a parallel plane to the plane of the building wall and that does not extend more than twelve (12) inches from the surface of that building or, does not project above the top of a parapet wall or the roof line at the wall, whichever, is highest. A wall sign is also that sign established on a false wall or false roof that does not vary more than thirty (30) degrees from the plane of the building's parallel wall.

Awning - A removable shelter of canvas, plastic, metal or similar material extending over a doorway or window to provide shelter from natural elements.

Awning signs - Signs painted or attached flat or flush against the surface of the awning, but not extending above, below or beyond the awning or attached to the underside provided that the total area of all awning signage does not exceed that allowed for wall signs.

Building face or wall - All window and wall or facade area of a building in one (1) plane or elevation.

Building frontage - The linear length of a building parallel to or closely facing the right-of-way.

Canopy or marquee - A permanent roof-like shelter extending from part or all of a building face over a public right-of-way and constructed of a durable material such as metal, glass or plastic.

Canopy or marquee sign - Any sign attached to or part of a canopy or marquee. The copy area on such a sign is computed as all or a portion of the allowed wall sign area.

Changeable copy sign (manual) - A sign that is designed so that the message, characters, letters or illustrations can be manually (as opposed to electronically) changed or rearranged without altering the face or the surface of the sign.

Copy - The wording or message on a sign surface in letter or graphic form, giving only the name of the business, its logo, by-line or principal products sold.

Copy area - The area, in square feet, of the smallest geometric figure, which circumscribes the area enclosed by the actual copy of a sign. When referring to a wall sign or a facia sign, the copy area refers to the actual message or total area within a border or area highlighted within a contrasting background, not to the illuminated background. Also - See "Area".

Directional sign - Signage whose sole purpose is for on-site public safety and convenience. Directional signs may be located adjacent to driveways, for example, "in", "out", "entrance", "parking", "and exit".

Directory sign - Signs which are necessary to identify and locate occupants of a building, including office/industrial buildings and church directories.

Freestanding sign - A sign established on a freestanding frame, mast or pole and not attached to any building. Also known as an unattached sign, ground sign, pole and pylon sign.

Internally illuminated sign - Any sign which emanates light either by means of exposed tubing, electrical bulbs, fluorescent lights, neon tubes or lamps on its surface or by means of illumination transmitted through the sign faces. Any decorative lighting that is used expressly for the purpose of advertisement shall be construed as an illuminated sign.

Indirectly illuminated sign - Any sign which reflects light from a source intentionally directed upon such as by: floodlights, or externally mounted fluorescent light fixtures.

Individual letter sign - Any sign made of self-contained letters that are mounted individually - See "Copy Area"

Nameplate - A non-electrical sign identifying only the name, occupation or profession of the occupant of the premise on which the sign is located.

Non-conforming sign - Any sign which was lawfully established prior to the date this Sign Ordinance was adopted, and which fails to conform to the specifications of this Ordinance.

Off-premise sign - Any sign visible from a public right-of-way identifying or advertising a business, person, activity, goods, products or services not located on the premise where the sign is installed and maintained.

Portable sign - Any sign not permanently attached to the ground or a building such as a banner, flag, "A" frame, or trailer sign.

Premise - The land on which a building(s) sits. In the case of a condominium the word premise shall also include the common area.

Projecting sign - A sign, other than a wall sign, which is attached to and projects more than twelve (12) inches beyond the surface to which it is affixed.

Real estate sign - A temporary non-electrical ground or wall sign that either advertises the on-site sale, rental or lease of a premise or a portion thereof.

Registration - An official record maintained by the Code Administrator as to the purpose of signage and containing the date of establishment.

Roof line - The top edge of the roof or the top of the parapet, where the junction of the roof and the perimeter wall of the structure forms the top line of the building silhouette

Roof sign - A sign established upon, against or directly above a roof, or on top of or above the parapet of a building. Signs placed on a mansard roof shall be considered a roof sign.

Sign - A permanent or temporary two or three dimensional device, structure, light, letter, word, object or copy, model, banner, streamer, pennant, display, insignia, emblem, trade flag, presentation by figures, designs, pictures, logos or colors visible to the public from outside a building from traveled way or otherwise. A device whose purpose is to convey a message to the public to advertise, direct, invite, announce or draw attention to directly or indirectly, a use conducted, goods, products services or facilities available, either on the lot or on any other premise. Includes any permanently installed or prominently situated merchandise, sign structures and appurtenances.

Sign structure - Any framework, either free-standing or an integral part of the building, which supports or is capable of supporting any sign, including a cover.

Subdivision identification sign - A sign whose sole purpose is to identify the name of a residential subdivision located in the residential district.

Symbol sign - Signs which illustrate a generic representation or symbol pertaining to a business or service, but shall not relate to a specific business name. Includes commonly recognized international symbol signs. Such signs shall not contain any letter, word, company, product insignia, or logo.

Temporary sign - Any sign which is not permanently established; including "A" frames, trailers, banners and portable signs. See definition of signs.

Tenant unit - Any space within a building that is leased, rented, owned or used for the operation of a business.

Window sign - A sign established within a window plane inside a window for purposes of viewing from outside the premise. No permit required.

7.070 SENIOR HOUSING DEVELOPMENT (2002)

7.071 PURPOSE:

- A. To provide standards for the location and development of appropriate sites within the Town for:
 - 1. Independent senior housing units
 - 2. Assisted living facilities
 - 3. Congregate care facilities.
- B. To serve the needs of persons sixty-two (62) years of age or older.
- C. To regulate the intensity and mix of the different types of dwelling units required to meet the needs of seniors.
- D. To provide ample outdoor and livable space.
- E. To retain a sense of personal identity, intimacy, and human scale within the development;
- F. To provide meeting rooms, function rooms and recreational facilities.
- G. To regulate the bulk, height, and spacing of buildings and the traffic circulation and parking pattern within the development.
- H. To insure adequate light, air, privacy, landscaping, and open space for passive and active recreation are provided within the development.
- I. To define an “overlay” zone, the standards of which shall supersede conflicting standards in zoning districts in which a senior housing development is listed as a permitted use.
- J. To institute the policy that Senior Housing Developments shall be an “acceptable use” in the following zoning districts:
 - 1. Residence “B”
 - 2. Commercial “C”
 - 3. Limited Commercial “L-C”
- K. To institute the policy that Senior Housing Developments may be allowed in the following zoning districts by “Special Exception:”
 - 1. Residence “A”
 - 2. Integrated Commercial-Industrial “ICI”

7.072 USES PERMITTED WITHIN SENIOR HOUSING DEVELOPMENTS

- A. Independent Senior Housing Units
- B. Assisted Living Facilities
- C. Congregate Care Facilities
- D. Ancillary Facilities As Accessory Uses

7.073 OCCUPANCY ELIGIBILITY FOR LIVING UNITS WITHIN SENIOR HOUSING DEVELOPMENTS

- A. Occupancy within a Senior Housing Development is restricted to persons sixty-two (62) years of age or older, or disabled as defined by state and federal regulations.
- B. Occupancy for assisted living facilities and congregate care facilities as determined by state and/or federal regulations.

7.074 MINIMUM STANDARDS FOR DEVELOPMENT

The following standards are the minimum standards for any senior housing development. These standards may be modified by the Planning Board only if necessary to accommodate the specific demands of a particular site or proposal; however, the Planning Board shall not grant exceptions to the minimums of the underlying zoning district.

A. Minimum lot size:

1. On lots served by both municipal water and sewer systems: one (1) acre (43,560 sq. ft.) or larger.
2. On lots **NOT** served by both municipal water and sewer systems: two (2) acres (87,120 sq. ft.) or larger, depending on soil and slope conditions, as may be necessary to sustain development according to state lot-size standards.

B. Minimum lot frontage: as allowed in the underlying zoning district.

C. Minimum unit size:

1. One (1) bedroom independent senior housing units: five hundred-fifty (550) square feet
2. Two (2) bedroom independent senior housing units: seven hundred (700) square feet

D. Minimum unit size for assisted living facilities and congregate care facilities shall be determined by state and/or federal regulation.

E. Density

1. On property serviced by municipal sewer and water systems: thirty (30) bedrooms per acre of usable land
2. On property **NOT** serviced by municipal sewer and water systems: four (4) bedrooms per acre of usable land
3. There shall be no more than two (2) bedrooms per dwelling unit.
4. Minimum spacing between buildings:
 - a. one (1) story structures: twenty (20) feet
 - b. two (2) or more stories: thirty-five (35) feet.

F. Setbacks

1. Any structure shall be set back at least thirty (30) feet from the front lot line.
2. Any structure shall be set back at least thirty (30) feet from the side and rear property lines.

G. Buffers

The purpose of the buffer zones is to provide a transition area between adjoining land uses.

1. A minimum fifteen (15) foot wide landscaped area shall serve as a buffer on sides and rear.
2. There shall be a ten (10) foot wide landscaped area along the public right of way.
3. The buffer area shall contain year round screening. Screening may consist of shrubs, trees, fencing, as directed by the Planning Board during Site Plan Review.

H. Open Space

Open space shall consist of a minimum of thirty (30) percent of the property. No wetlands or slopes over fifteen (15) percent shall be included in the minimum.

I. Ancillary Facilities as Accessory Uses

Ancillary facilities, usually associated with the living needs for comfort, health, safety and welfare of seniors shall be provided to meet the need of the proposed population of the development. The floor area of such ancillary facilities shall not be less than five (5) percent of the total floor area of the building(s). These facilities may include dispensaries, common dining, group recreation or other similar or related facilities solely for the support of the residents of the development.

J. Outdoor Recreation Facilities

Outdoor recreation facilities shall be required and may be active and/or passive in nature. Outdoor recreation facilities may be incorporated in the minimum Open Space. Allowable impermeable surface for these facilities within the Open Space shall not exceed ten (10) percent of the Open Space requirement.

1. Active Recreation shall be defined as leisure time activities, usually of a formal nature and often performed with others, requiring equipment and taking place at prescribed places, sites, or fields.
2. Passive Recreation shall be defined as activities that involve relatively inactive or less energetic activities such as gardening, walking, sitting, picnicking, card games, chess, checkers or similar table games. Passive recreation can also mean open space for nature walks and observation.

K. On-Site Parking

1. Minimum parking space requirement shall be one (1) space per bedroom.
2. Additional parking of one (1) space for every four (4) bedrooms shall be required.
3. Garages shall **NOT** be used to satisfy minimum parking requirements.
4. Covered parking spaces that cannot be used for or converted to storage or additional living space by the user/owner may be included in the calculation for required parking for the development.

7.075 CHANGE OF USE

If any structure erected in accordance with this section ceases to be used exclusively for senior housing, then the full zoning requirements in the underlying zone must be met for the new use. Failure to comply with the zoning ordinance shall result in a revocation of the site plan approval and/or any certificate of occupancy for the structure.

7.076 EXPIRATION

If within one (1) year after the signing of site plan approval by the Planning Board construction has not commenced, then such approval shall become null and void. This one (1) year limit may be extended with the approval of the Planning Board.

7.077 OTHER REQUIREMENTS

- A. Minimum safety standards: The development shall meet all applicable building codes and life safety codes that have been adopted by the Town of Milford, as well as other state and federal statutes and regulations.
- B. All site plans shall be reviewed by emergency service providers.
- C. Roads shall be built in accordance with Town of Milford road specifications and requirements.
- D. Drive aisles, access to parking areas, driveways, and secondary access drives, must provide sufficient width for safe and efficient one-way or two-way vehicular movement, in accordance with accepted design and engineering practice.
- E. Sidewalks and/or suitable walkways shall be provided throughout the development depending upon the type of development and/or number of dwelling units within the development.

- F. The Planning Board, upon the recommendations of the town transportation and traffic master plan, may require the applicant to provide fair-share contributions towards or construction of off-site road and/or sidewalk and pedestrian improvements that become necessary due to the development.
- G. There shall be a maximum of two (2) access points from existing or proposed public roads to the development, depending upon the type of development and/or number of dwelling units within the development. One (1) of the access points may be restricted for emergency access only, upon review of the fire department, providers of emergency services and approval by the Planning Board.
- H. Where retained as private roads, standard road signs shall be posted at the expense of the developer.
- I. The Planning Board shall require such covenants or legal restrictions they deem necessary to insure the intent of the ordinance and compliance with state and federal regulations.
- J. A performance bond as well as other legal data shall be submitted as required by the Planning Board to insure the completion of roads, buffers, and amenities in accordance with the accepted plans and the Site Plan Regulations of the Town of Milford as adopted or hereafter amended.

7.078 DEFINITIONS

Assisted Living Facility: Units for persons sixty-two (62) years of age and older where rooms, meals, personal care and supervision of self-administered medication are provided. Other services may be provided as an accessory use only such as recreational activities, financial services and transportation.

Congregate Care Facility: Units for persons sixty-two (62) years of age or older where communal dining facilities and services such as housekeeping, organized social and recreational activities, transportation services, and other support services appropriate for the residents are provided.

Independent Senior Housing Units: Dwelling units for persons sixty-two (62) years of age or older.

Usable Land: Land that does not consist of wetland and slopes over fifteen (15) percent.

7.080 STANDARDS FOR ADULT ENTERTAINMENT BUSINESSES (2000)

A. Purpose

It is the purpose of this to establish reasonable and uniform regulations to prevent the concentration of adult entertainment businesses within the Town of Milford.

B. Intent

1. It is the intent to promote the health, safety, and general welfare of the citizens of the Town of Milford; and, it is the intent of this that the regulations be utilized to prevent problems of blight and deterioration which accompany and are brought about by the concentration of adult entertainment businesses; and, the provisions of this have neither the purpose nor effect of imposing limitation or restriction on the content of any communicative materials, including sexually oriented materials;
2. It is not the intent nor the effect of this to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market; and, neither is it the intent nor effect of this to condone or legitimize the distribution of obscene materials.

C. Allowed locations and Location Restrictions of Adult Entertainment Businesses

1. Allowed Locations

Adult entertainment businesses, defined in 7.081 are permitted only in the ICI (Integrated Commercial-Industrial District) provided that all other regulations, requirements, and restrictions for the zone in which the adult entertainment business is to be located are met; and no entertainment business shall be permitted within one thousand (1000) feet of another existing adult entertainment business or one for which a building permit has been applied for; and

2. Location Restrictions

- a. No adult entertainment business shall be permitted within one thousand (1000) feet of all other zoning boundaries, except for the Industrial (I) Zone.
- b. No adult entertainment business shall be permitted within one thousand (1000) feet of any church, place of worship, parish house, convent, public, parochial, or private school, kindergarten, State approved Day Care Center, or Commercial or Not-for Profit Recreational Facilities and no adult entertainment business shall be permitted within one thousand (1000) feet of the Town boundaries;
- c. No adult entertainment business shall be permitted within five hundred (500) feet of an existing residence; and
- d. No adult entertainment business shall be permitted within one thousand (1000) feet of another existing adult entertainment business on the date of the passage of this and, no adult entertainment business shall be permitted within a building, premise, structure or other facility that contains a sexually oriented business as defined herein.

3. Measure of Distance

The distance between any adult entertainment business and a church, school, residence, etc. or another adult entertainment business shall be measured in a straight line, from property boundary to property boundary, without regard to intervening structures.

4. Additional Reasonable Regulations

The Planning Board is empowered hereunder to review and approve permit applications for adult entertainment businesses and impose reasonable restrictions for buffering, outdoor lighting, parking, adequate

ingress and egress from the site off of and onto public roads, pedestrian movement, hours of operation, and to provide for appropriate landscaping and building aesthetics as required in the Town of Milford Non-Residential Site Plan Review Regulations.

7.081 DEFINITIONS

Except where specifically defined or otherwise referenced within this Ordinance, words and terms used are intended to imply their customary definition and meaning. The following words and terms are specifically defined as follows:

Adult bookstore or adult video store - A commercial establishment that devotes more than fifteen (15) percent of the total display, shelf, rack, wall, table, stand or floor area, utilized for the display and sale of the following items listed in a) and b) below. The establishment, as one of the principal business purposes, offers for sale or rental for any form of consideration, any one or more of the following:

- A. Books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes, video productions, slides, tapes, records, CD-ROMs or other forms of visual or audio representations which depict or describe “specified sexual activities” or “specified anatomical areas” or meet the definition of “harmful to minors” and/or “sexual conduct” as set forth in RSA-571-B:1; or,
- B. Instruments, devices or paraphernalia which are designed for use in connections with “sexual conduct” as defined in RSA-571-B:1, other than birth control devices. A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing “specified sexual conduct or activities” and still be categorized as “Adult Video/Book Store”. Such other business purposes will not serve to exempt such commercial establishments from being categorized as an “Adult Video/Book Store” so long as one of its principal business purposes is offering for sale or rental for consideration to specified material which depict or describe specified sexual conduct or activities or specified anatomical areas.
 - 1. Specified sexual conduct or activities means that the male genitals in a state of sexual arousal and/or the vulva or more intimate parts of the female genitals.
 - 2. Specified anatomical areas means and includes any of the following:
 - a. The fondling or other erotic touching of the human genitals, pubic region, buttocks, anus, or female breasts;
 - b. Sex acts, normal or perverted, actual or simulated, including intercourse, or copulation, or sodomy;
 - c. Masturbation, actual or simulated; or
 - d. Excretory function as part of or in connection with any of the activities set forth in a) through c) above.

An adult bookstore or adult video store does not include an establishment that sells books or periodicals as an incidental or accessory part of its principal stock and trade and does not devote more than fifteen (15) percent of the total display area of the establishment to the sale of books and periodicals.

Adult cabaret - A nightclub, bar, restaurant or similar establishment which during a substantial portion of the total presentation time features live performances which meet the definition of “harmful to minors” and/or “sexual conduct” as set forth in RSA-571-B:1, and/or feature films, motion pictures, video cassettes, slides or other photographic reproductions, a substantial portion of the total presentation time of which is devoted to showing of material which meets the definition of “harmful to minors” and/or “sexual conduct” as set forth in RSA-571-B:1.

Adult drive-in theater - An open lot or part thereof, with appurtenant facilities, devoted primarily to the presentation of motion pictures, films, theatrical productions and other forms of visual productions, for any form of consideration to persons in motor vehicles or on outdoor seats, in which a substantial portion of the total

presentation time being presented for observation by patrons is devoted to the showing of material which meets the definition of “harmful to minors” and/or “sexual conduct as set forth in RSA-571-B:1.

Adult entertainment business - means an Adult Bookstore or Adult Video Store, Adult Cabaret, Adult Drive-In Theater, Adult Motel, Adult Motion Picture Arcade, Adult Motion Picture Theater, Adult Theater, Nude Model Studio or Sexual Encounter Center.

Adult motel - A motel or similar establishment offering public accommodations of any form of consideration which provides patrons with closed circuit television transmissions, films, motion pictures, video cassettes, slides or photographic reproductions, a substantial portion of the total presentation time of which are distinguished or characterized by an emphasis upon the depiction or description of materials which meet the definition of “harmful to minors” and/or “sexual conduct” as set forth in RSA-571-B:1.

Adult motion picture arcade - Any place to which the public is permitted or invited wherein coin or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five (5) or fewer persons per machine at any one time, in which a substantial portion of the total presentation of the images so displayed is devoted to the showing of material which meets the definition of “harmful to minors” and/or “sexual conduct” , as set forth in RSA-571-B:1.

Adult motion picture theater - An establishment with a capacity of five (5) or more persons, where for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions are shown, and in which a substantial portion of the total presentation time is devoted to the showing of material which meets the definition of “harmful to minors” and/or “sexual conduct” as set forth in RSA-571-B:1.

Adult theater - A theater, concert hall, auditorium or similar establishment either indoor or outdoor in nature, which for any form of consideration, regularly features live performances, a substantial portion of the total presentation time of which are distinguished or characterized by an emphasis on activities which meet the definition of “harmful to minors” and/or “sexual conduct” as set forth in RSA-571-B:1.

Nude model studio - A place where a person who appears in the state of nudity or displays male genitals in a state of arousal and/or the vulva or more intimate parts of the female genitals and is observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration or such display is characterized by an emphasis on activities which meets the definition of “harmful to minors” and/or “sexual conduct” as set forth in RSA-571-B:1.

Nudity or a state of nudity - The appearance of a human bare buttock, anus, male genitals, female genitals, or full female breast.

Semi-nude - A state of dress in which clothing covers no more than genitals, pubic region and areola of the female breast, as well as portions of the body supporting straps or devices.

Sexual encounter center - A business or commercial enterprise that as one of its primary business purposes offers for any form of consideration:

- a. Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
- b. Activities between male and female persons and/or persons of the same sex when one or more persons are in the state of nudity; or
- c. Where the activities in a) or b) is characterized by an emphasis on activities which meets the definition of “harmful to minors” and/or “sexual conduct”, as set forth in RSA-571-B:1

7.090 TELECOMMUNICATION FACILITIES (2000)

A. Purpose and Intent

It is the express purpose of this Section to permit carriers to locate telecommunications facilities within particular areas of the Town of Milford consistent with appropriate land use regulations that will ensure compatibility with the natural and built features and character of the Town. Compatibility with these features of Milford is measured based on the change in community scale and character in relation to the height, mass, materials, contrasts, or proportion within the surrounds of a proposed telecommunications facility. This Section enables the review of the locating and siting of telecommunications facilities by the Town of Milford so as to eliminate or mitigate the visual and environmental impacts of these facilities. This Section is structured to encourage carriers to locate on existing buildings and structures whenever possible. New ground-mounted facilities are permitted but only when the use of existing structures and buildings is found to not be feasible. Co-location is encouraged for all telecommunication applications and the review of such a facility shall be on the basis of the site being built using all positions on the mount.

B. Applicability

The terms of this Section and the Site Plan Review Regulations shall apply to telecommunication facilities (hereinafter “facility(ies)”) on property owned by the Town of Milford, on privately owned property, and on property that is owned by any governmental entity that acts in its proprietary capacity to lease such property to a carrier.

7.091 DEFINITIONS

For the purpose of this Article, the following terms shall have the meaning given herein:

Antenna - The surface from which wireless radio signals are sent and/or received by a telecommunication facility.

Antenna array - A collection of antennas attached to a mount to send and receive radio signals.

Average tree canopy height - An average height found by inventorying the height at above-ground level (AGL) of all trees over twenty (20) feet in height for a defined area.

Camouflaged - A telecommunication facility that is disguised, hidden, part of an existing or proposed structure, or placed within an existing or proposed structure.

Carrier - A Company that provides telecommunication services. Also sometimes referred to as a provider.

Co-location - The use of a single mount on the ground by more than one carrier (vertical co-location) or the same carrier with multiple licenses, and/or the use of several mounts on an existing building or structure by more than one carrier or the same carrier with multiple licenses.

Environmental assessment (EA) - An EA is a document required by the Federal Communications Commission (FCC) and the National Environmental Policy Act (NEPA) when a telecommunication facility is placed in certain designated areas.

Equipment shelter - An enclosed structure, cabinet, shed, vault, or box near the base of the mount within which are housed equipment for telecommunication facilities such as batteries and electrical equipment. Equipment shelters are sometimes referred to as base transceiver stations.

Facility - See Telecommunications Facility

Fall zone - The area on the ground from the base of a ground mounted telecommunication facility that forms a circle with a diameter equal to the height of the facility, including any antennas or other appurtenances. The fall zone is the area within the area defined by the circle, which there is a potential hazard from falling debris (such as ice) or collapsing material.

Guyed tower - A monopole or lattice tower that is secured to the ground or other surface by diagonal cables for lateral support.

Height - The height above ground level (AGL) from the natural grade of a site to the highest point of a structure.

Lattice tower - A type of mount with multiple legs and structural cross bracing between the legs, that is self-supporting and freestanding.

Mast - A thin pole that resembles a streetlight standard or a telephone pole. A dual-polarized antenna is typically deployed on a mast.

Monopole - A thicker type of mount than a mast that is self-supporting with a single shaft of wood, steel or concrete, or other material, that is designed for the placement of antennas and arrays along the shaft.

Mount - The structure or surface upon which antennas are mounted, including the following four types of mounts:

1. Roof-mounted (mounted on the roof of a building)
2. Side-mounted (mounted on the side of a building)
3. Ground-mounted (mounted on the ground)
4. Structure-mounted (mounted on a structure other than a building)

Radio frequency (rf) engineer - An engineer specializing in electrical or microwave engineering, especially the study of radio frequencies.

Radio frequency radiation (rfd) - The emissions from telecommunications facilities.

Security barrier - A wall, fence, or berm that restricts an area from unauthorized entry or trespass.

Separation - The distance between one carrier's array of antennas and another carrier's array.

Telecommunication facility - A facility for the provision of personal wireless services as defined by the Telecommunications Act of 1996, as amended. Telecommunications facilities include a mount, antenna, equipment shelter, and other related equipment. Telecommunication facilities do not include private or non-commercial wireless communication facilities such as amateur ham radio and citizen band radio.

Telecommunication services - The three types of services regulated by this Section are: Commercial mobile radio services, unlicensed wireless services and common carrier wireless exchange access services as described in the Telecommunications Act of 1996, as amended.

7.092 DISTRICT REGULATIONS

- A. Location - Telecommunication facilities shall be permitted in all zoning districts. Applicants seeking approval for these facilities shall first evaluate existing structures for their siting. Only after finding that there are no suitable existing structures pursuant to Section 7.092.C herein, shall a provider propose a new ground-mounted facility.
- B. Existing Structures: Policy - Telecommunications facilities shall be located on existing structures, including but not limited to buildings, water towers, existing telecommunications facilities, utility poles or towers, and related facilities, provided that such installation preserves the character and integrity of those structures.
- C. Existing Structures: Burden of Proof - The applicant shall have the burden of proving that there are no existing structures which are suitable to locate its telecommunication facility and/or transmit or receive radio signals. To meet that burden, the applicant shall take all the following actions to the extent possible:
 1. The applicant shall submit to the Planning Board a list of all contacts made with owners of potential sites regarding the availability of potential space for a telecommunication facility. If the Planning Board

informs the applicant that additional existing structures may be satisfactory, the applicant shall contact the property owner(s) of those structures.

2. The applicant shall provide copies of all letters of inquiry made to owners of existing structures, letters of rejection if received, and proof of certified mailing. If letters of rejection are not provided, at a minimum, unanswered "Return Receipt Requested" forms from the U.S. Post Office shall be provided for each owner of existing structures that was contacted.
 3. If the applicant claims that a structure is not capable of physically supporting a telecommunications facility, this claim must be certified by a licensed professional engineer. The certification shall, at a minimum, explain the structural issues and demonstrate that the structure cannot be modified to support the telecommunication facility without unreasonable costs. The estimated cost shall be provided to the Planning Board.
- D. Ground-mounted Facilities: Policy - If the applicant demonstrates that it is not feasible to locate on an existing structure, ground-mounted telecommunications facilities shall be designed so as to be camouflaged to the greatest extent possible, including but not limited to: use of compatible building materials and colors, screening, landscaping and placement within trees.

7.093 USE REGULATIONS

A telecommunications facility may require site plan review as noted below, and a building permit in all cases, and may be permitted as follows:

- A. Existing Tower Structures - Subject to the issuance of a building permit that includes site plan approval by the Planning Board, which review shall include, but not be limited to issues relating to access, bonding, and security for removal, structural integrity and appropriate camouflage of such siting. Carriers may locate a telecommunications facility on any guyed tower, lattice tower, mast, or monopole in existence prior to the adoption of this Section, or on any facility previously approved under the provisions of this Section so long as the co-location complies with the approved site plan. All the Performance Standards from this Section shall be met. This provision shall apply only so long as the height of the mount is not increased, a security barrier already exists, and the area of the security barrier is not increased. Otherwise, site plan review is required.
- B. Reconstruction of Existing Tower Structures - An existing guyed tower, lattice tower, monopole, or mast in existence prior to the adoption of this Section may be reconstructed with a maximum twenty (20) foot increase in height so as to maximize co-location so long as the standards of this Section are met and so long as this twenty (20) foot increase in height does not cause a facility previously existing at less than two-hundred (200) feet to exceed two-hundred (200) feet in height. The mount shall be replaced with a similar mount that does not significantly increase the visual impact on the community. Site plan review is required.
- C. Existing Structures - Subject to the provisions of this Section and site plan review under RSA 674:43:III and except as otherwise permitted under Section 7.093.A, a carrier may locate a telecommunications facility on an existing structure, building, utility tower or pole, or water tower. For the purpose of this section, new structures that are conforming to all other district zoning requirements shall be considered as existing structures.
- D. Ground-mounted Facility - A tele-communications facility involving construction of a ground-mount shall require site plan review and be subject to the provisions of this Section.

7.094 DIMENSIONAL REQUIREMENTS

- A. Telecommunication facilities shall comply with the following requirements:
 1. Height Maximum - In no case shall a telecommunication facility exceed two-hundred (200) feet in height, unless the mount for the facility was greater than two-hundred (200) feet in height prior to the adoption of this Article.

2. Height, Existing Structures and Utility Poles - Carriers that locate new telecommunication facilities on water towers, electric transmission and distribution towers, utility poles and similar existing utility structures, guyed towers, lattice towers, masts, and monopoles may be permitted to increase the height of those structures no more than twenty (20) feet, or forty (40) feet at the discretion of the Planning Board, if the additional height will not materially impair the visual impacts of the site. This increase in height shall only be permitted once for each structure.
 3. Height, Ground-Mounted Facilities - Ground-mounted telecommunication facilities shall not project higher than twenty (20) feet above the average tree canopy height within a one-hundred fifty (150) foot radius of the mount, security barrier, or designated clear area for access to equipment, whichever is greatest.
 4. Setbacks - All telecommunications facilities and their equipment shelters shall comply with the building setback provisions of the zoning district in which the facility is located. Fences necessary for the facility shall comply with the setback provisions of the zoning district in which the facility is located if the fence is six (6) feet or more in height.
 5. Fall Zone for Ground-Mounts - In order to ensure public safety, the minimum distance from the base of any ground-mount of a telecommunications facility to any property line, public road, habitable dwelling, business or institutional use, or public recreational area shall be, at a minimum, the distance equal to the fall zone, as defined in this Section. The fall zone may cross property lines, so long as the applicant secures a fall zone easement from the affected property owner(s). The area of the easement shall be shown on all applicable plans submitted to the Town, and the terms of the easement shall be provided as part of the Site Plan review. Easements shall be recorded at the Hillsborough County Registry of Deeds.
 6. Fall Zone for Non-Ground Mounts - In the event that an existing structure is proposed as a mount for a telecommunications facility, a fall zone shall not be required, but the setback provisions of the zoning district shall apply. In the case of pre-existing non-conforming structures, telecommunication facilities and their equipment shelters shall not increase any non-conformities.
- B. Planning Board Flexibility: Heights - In reviewing a site plan application for a telecommunication facility, the Planning Board may permit an increase in the height of a ground-mounted facility up to forty (40) feet above the average tree canopy height, if no material increase in visual or environmental impacts will result from the increased height. The visual and environmental criteria of this Section and the Site Plan Review Regulations shall be the guidelines in making this determination.

7.095 PERFORMANCE AND DESIGN STANDARDS

A. Visibility

1. Visual impacts are measured on the basis of:
 - a. Change in community scale, as exhibited in relative height, mass or proportion of the personal wireless service facility within their proposed surroundings.
 - b. New visible elements proposed on a contrasting background.
 - c. Different colors and textures proposed against a contrasting background.
 - d. Use of materials that are foreign to the existing built environment.
2. Enhancements are measured on the basis of:
 - a. Conservation of opportunities to maintain community scale, e.g. buffering areas and low-lying buildings should not be compromised to as to start a trend away from the existing community scale.
 - b. Amount and type of landscaping and/or natural vegetation.
 - c. Preservation of view corridors, vistas, and view sheds.

- d. Continuation of existing colors, textures and materials.
- 3. Visibility focuses on:
 - a. Eliminating or mitigating visual impact.
 - b. Protecting, continuing, and enhancing the existing environment.
- 4. Camouflage for Facilities on Existing Buildings or Structures - Roof Mounts when a telecommunication facility extends above the roof height of a building on which it is mounted, every effort shall be made to conceal or camouflage the facility within or behind existing or new architectural features to limit its visibility from public ways. Facilities mounted on a roof shall be stepped back from the front facade in order to limit their impact on the building's silhouette.
- 5. Camouflage for Facilities on Existing Buildings or Structures - Side Mounts - Telecommunication facilities, which are side-mounted, shall blend with the existing building's architecture and, if individual antenna panels are over five (5) square feet, the panels shall be painted or shielded with material consistent with the design features and materials of the building.
- 6. Camouflage for Ground-Mounted Facilities - All ground-mounted telecommunication facilities shall be surrounded by a buffer of dense tree growth, primarily of coniferous or evergreen trees, that extends continuously for a minimum distance of one hundred-fifty (150) feet from the mount, security barrier, or designated clear area for access to equipment, whichever is greatest, and screens views of the facility in all directions. These trees must be existing on the subject property, planted on site, or be within a landscape easement on an adjoining site. The Planning Board shall have the authority to decrease, relocate, or alter the required buffer based on site conditions. The one-hundred and fifty (150) foot vegetative buffer area shall be protected by a landscape easement or be within the area of the carrier's lease. The easement or lease shall specify that the trees are dead or dying and present a hazard to persons or property.
- 7. Color - To the extent that any telecommunication facilities extend above the height of the vegetation immediately surrounding it, they shall be of a color, which blends with the background or surroundings.
- 8. Equipment Shelters - Equipment shelters for telecommunication facilities shall be designed consistent with one of the following design standards:
 - a. Equipment shelters shall be located in underground vaults; or
 - b. Equipment shelters shall be designed so that the shelters are architecturally consistent, with respect to materials and appearance, to the buildings in the area of the telecommunication facilities; or
 - c. Equipment shelters shall be camouflaged behind an effective year-round landscape buffer, equal to the height of the proposed building, and/or wooden fence. The Planning Board shall determine the style of fencing and/or landscape buffer that is compatible with the neighborhood; or
 - d. If mounted on a rooftop, the equipment shelter shall be concealed or camouflaged so that the shelter either is not visible at grade or appears to be a part of the original structure.
- 9. Lighting, Signage and Security
 - a. Lighting - The mounts of telecommunication facilities shall be lighted only if required by the Federal Aviation Administration (FAA). Lighting of equipment structures and any other facilities on site shall be shielded from abutting properties. Foot-candle measurements at the property line shall be 0.0 initial foot-candles.
 - b. Signage - Signs shall be limited to those needed to identify the property and the owner and warn of any danger. All signs shall comply with the requirements of the Milford Zoning Ordinance.
 - c. Security Barrier - The Planning Board shall have final authority on whether a ground mounted telecommunication facility should be surrounded by a security barrier.

10. Historic Buildings

- a. Any telecommunication facility located on or within a historic structure shall not alter the character-defining features, distinctive construction methods, or original historic materials of the building.
 - b. Any alteration made to a historic structure to accommodate a telecommunication facility shall be fully reversible.
 - c. Telecommunication facilities authorized by this subsection shall be concealed within or behind existing architectural features, or shall be located so that they are not visible from public roads and viewing areas.
11. Scenic Landscapes and Vistas - Ground-mounted facilities shall not be located within open areas that are clearly visible from public roads, recreational areas, or abutting properties. All ground-mounted telecommunication facilities shall be surrounded by a buffer of dense tree growth as per Section 7.095.A.6.
 12. Driveways - If available, existing entrances and driveways to serve a telecommunication facility shall be utilized, unless the applicant can demonstrate that a new entrance and driveway will result in less visual, traffic and environmental impact. New driveways to serve a telecommunication facility shall not exceed twelve (12) feet in width. A gravel or crushed stone surface is encouraged.
 13. Antenna Types - Any antenna array placed upon an existing or proposed ground mount, utility pole, or transmission line mount shall have a diameter of no more than four (4) feet, exclusive of the diameter of the mount. A larger diameter antenna array may be permitted after a finding by the Planning Board that the visual impacts of a larger antenna array are negligible.
 14. Ground and Roof Mounts - All ground mounts shall be of a mast type mount. Lattice towers, guyed towers, and roof mounted monopoles are expressly prohibited, unless constructed as part of a reconstruction project permitted under Section 7.093.B.
 15. Hazardous Waste - No hazardous waste shall be discharged on the site of any telecommunication facility. If any hazardous materials are to be used on site, there shall be provisions for full containment of such materials. An enclosed containment area shall be provided with a sealed floor, designed to contain at least one hundred and ten (110) percent of the volume of the hazardous materials stored or used on the site.
 16. Noise - Telecommunication facilities shall not generate noise in excess of that permitted by Town Ordinance.
 17. Radio frequency Radiation (RFR) Standards - All equipment proposed for a telecommunication facility shall be fully compliant with the FCC Guidelines for Evaluating the Environmental Effects of Radio frequency (FCC Guidelines), under *Report and Order*, FCC 96-326, published on August 1, 1996, and all subsequent amendments.

7.096 MONITORING AND MAINTENANCE

- A. Maintenance - The owner of the facility shall maintain the telecommunication facility in good condition. Such maintenance shall include, but shall not be limited to, painting, structural integrity of the mount and security barrier, and maintenance of the buffer areas and landscaping.
- B. Monitoring - As part of the issuance of the site plan approval or building permit, the property owner shall agree that the Town of Milford may enter the subject property to obtain RFR measurements and noise measurements at the expense of the carrier. The Town shall provide reasonable written notice to the carrier and landowner and provide them the opportunity to accompany the Town representatives when the measurements are conducted.
- C. Security for Removal - Recognizing the hazardous situation presented by abandoned and unmonitored telecommunications facilities, the Planning Board shall set the form and amount of security that represents the cost for removal and disposal of abandoned telecommunication facilities in the event that a facility is

abandoned and the facility owner is unwilling or unable to remove the facility in accordance with Section 7.097. The amount of security shall be based upon the removal cost, plus fifteen percent (15%), be provided by the property owner, and the amounts certified by a professional structural engineer licensed in New Hampshire. The owner of the facility shall provide the Planning Board with a revised removal cost estimate and structural evaluation prepared by a professional structural engineer licensed in New Hampshire every five (5) years from the date of the Planning Board approval of the site plan. If the cost has increased more than fifteen percent (15%), then the property owner shall provide additional security in the amount of the increase.

7.097 ABANDONMENT OR DISCONTINUATION OF USE

- A. Notification - At such time that a carrier plans to abandon or discontinue operation of a telecommunication facility, such carrier will notify the Town by certified U.S. mail of the proposed date of abandonment or discontinuation of operations. Such notice shall be given no less than sixty (60) days prior to abandonment or discontinuation of operations. In the event that a carrier fails to give such notice, the telecommunication facility shall be considered abandoned upon such discontinuation of operations.
- B. Removal - Upon abandonment or discontinuation of use, the owner of the facility shall physically remove the telecommunication facility within ninety (90) days from the date of abandonment or discontinuation of use. "Physically remove" shall include, but not be limited to:
 - 1. Removal of antennas, mount, equipment shelters and security barriers from the subject property.
 - 2. Proper disposal of the waste materials from the site in accordance with local and state solid waste disposal regulations.
 - 3. Restoring the location of the telecommunication facility to its natural condition, except that any landscaping and grading shall remain in the after-condition.
- C. Failure to Remove - If the owner of the facility does not remove the facility upon the Order of the Zoning Administrator, then the Board of Selectmen shall, after holding a public hearing with notice to the owner of the facility, the property owner, and abutters, issue a Declaration of Abandonment. The owner of the facility shall dismantle and remove the facility within ninety (90) days of receipt of the Declaration of Abandonment by the Board of Selectmen. If the abandoned facility is not removed within ninety (90) days, the Town may execute the security to pay for this action.

ARTICLE VIII: ADMINISTRATION

8.010 ENFORCEMENT

This Ordinance shall be enforced by the Board of Selectmen, and the Board of Selectmen is hereby given power and authority to enforce the provisions of this Ordinance. The Board of Selectmen is further empowered to confer upon an administrative official appointed by the Board of Selectmen the duty of administering the provisions of this Ordinance. Upon any well-founded information that this Ordinance is being violated the Selectmen shall seek an injunction in superior court or shall take such other legal action, as they shall deem appropriate.

8.020 BUILDING PERMITS

8.021 No building or dwelling shall be constructed nor shall any structural alteration or enlargement of any existing building or dwelling or the placement of a mobile home for use as a dwelling be commenced until a permit shall have been obtained from the Board of Selectmen or their duly authorized representative.

8.022 The Board of Selectmen or their authorized representative may require of any applicant for a permit such sketches, drawings, plot plans, or other material as may be deemed necessary by the Board in connection with the issuance of the permit.

8.023 If an applicant for a permit requests a permit to undertake an activity on a lot not conforming in size and frontage as otherwise required by this Ordinance, such applicant shall file as part of his application the date of the recording and register of deeds volume and page number of the lot involved.

8.024 (DELETED 3/12/91)

8.025 A building permit is not required for the construction of a storage shed that is one hundred-twenty (120) sq. ft. or less and does not have electricity or plumbing. A building permit is required for the construction of a storage shed greater than one hundred-twenty (120) sq. ft. or a storage shed of any size that has electricity or plumbing. (1996)

A building permit is also required for the addition of plumbing to any existing storage shed.

8.030 CERTIFICATE OF OCCUPANCY

Any subdivision approved subsequent to March 11, 1986 which requires road system layout and construction, shall have provided in accordance with the Town Road Standards the base coat of surface pavement, which shall be subject to approval by the Department of Public Works and the Planning Board, prior to the issuance of any Certificate of Occupancy for any structure whose lot frontage would include any part of such proposed road system. Private ways shall be considered exempt from this requirement.

8.040 DRIVEWAY ENTRANCE PERMIT

A driveway entrance permit is required from the Milford Department of Public Works for any construction of any new or alteration of any existing driveway, entrance, exit or approach within the limits of the right of way of any town road. This permit shall be required for new impervious surfaces applied to any existing unpaved driveway.

8.050 1993 BOCA NATIONAL PROPERTY MAINTENANCE CODE

Adopt the 1993 BOCA (building officials & code administrators) National Property Maintenance Code.

An Ordinance establishing the minimum regulations governing the conditions and maintenance of all property, buildings and structures; by providing the standards for supplied utilities and facilities and other physical things and conditions essential to insure that structures are safe, sanitary and fit for occupation and use; and the condemnation of buildings and structures unfit for human occupancy and use and the demolition of such structures; known as the property maintenance code.

SECTION 1. ADOPTION OF PROPERTY MAINTENANCE CODE

That a certain document, three (3) copies of which are on file in the office of the town clerk of the Town of Milford, being marked and designated as "the BOCA National Property Maintenance Code, fourth edition, 1993), as published by the Building Officials and Code Administrators International, Inc., BE and is hereby adopted as the Property Maintenance Code of the Town of Milford, in the State of NH for the control of buildings and structures as herein provided; and each and all of the regulations, provisions, penalties, conditions and terms of said BOCA National Property Maintenance Code are hereby referred to, adopted, and made a part hereof, as if fully set out in this Ordinance, with the additions, insertions, deletions and changes, if any, prescribed in Section 3 of this Ordinance.

SECTION 2. INCONSISTENT ORDINANCES REPEALED (NOT APPLICABLE)

SECTION 3. ADDITIONS, INSERTIONS AND CHANGES

That the BOCA National Property Maintenance Code is amended and revised in the following respects:

Section PM-101.1 (page 1, second line)
insert: Town of Milford

Section PM-106.2 (page 3, third line)
delete section
insert: Reference RSA 674.17

Section PM - 106.2 (page 3, fourth line)
delete section
insert: Reference RSA 674.17-A

Section PM-303.4
delete section

Section PM-303.8
delete section
insert: Reference RSA 286.112

Section PM-303.7
delete the word "fence"

Section PM-304.12 (page 11, first line)
insert: May 1 to October 1

Section PM-305.4
lead base paint
Reference State of New Hampshire - Lead Paint
Laws

Section PM-602.2.1 (page 17, fifth line)
insert: October 1 to May 31

Section PM-602.3 (page 17, third line)
insert: October 1 to May 31

SECTION 4. SAVING CLAUSE

That nothing in this Ordinance or in the Property Maintenance Code hereby adopted shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance hereby repealed as cited in Section {2} of this Ordinance; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this Ordinance.

SECTION 5. DATE OF EFFECT

That the Town Clerk shall certify to the adoption of this Ordinance, and cause the same to be published as required by law; and this Ordinance shall take effect and be in force from and after its approval as required by law.

ARTICLE IX: BOARD OF ADJUSTMENT (1986)

9.010 AUTHORIZATION

In accordance with the provisions of the New Hampshire Revised Statutes Annotated, 1955, Chapter 31 (updated 1985, Chapter 674.33) as amended and as hereinafter a Board of Adjustment is established.

9.020 MEMBERS

The Board of Adjustment shall consist of five members appointed by the Board of Selectmen in the Town of Milford. Appointments to the board shall be for a term of three (3) years. Members of the Board shall serve without compensation. The Board shall elect one of its members to serve as chairman. The Board shall have five (5) alternate members to be appointed by the Board of Selectmen for a term of three (3) years each. (1997)

9.030 DUTIES & POWERS

The Board of Adjustment shall perform all the duties and have all the powers provided by the New Hampshire revised statutes annotated, 1955, as amended and as hereinafter provided.

9.040 MEETINGS

Meeting of the Board shall be held at the call of the chairman and at such other times as the Board of Adjustment may determine. All meetings shall be open to the public. The Board shall keep a record of all proceedings showing the vote upon every question. Every rule or regulation, every amendment or repeal thereof and every order, requirement or decision of the Board of Adjustment shall immediately be filed in the Office of the Zoning Administrator and shall become a public record. The concurring vote of three members of the Board of Adjustment shall be necessary to reverse any order, requirement, or determination of the administrative office or to decide any matter upon which it is required to pass or effect any variance from the strict application of the provisions of this Ordinance.

9.050 RULES

The Board of Adjustment shall adopt and promulgate rules of procedure for the guidance of all persons having business before the Board.

ARTICLE X: ADMINISTRATIVE RELIEF

10.010 VARIANCES

10.011 Any request for a permit of any nature required under this Ordinance which will require a variance from the prescribed standards of this Ordinance shall be made only by the owner of the property in question or his duly appointed agent and shall be transmitted to the Board of Adjustment or their duly appointed official to the Board. Upon receipt of the request, the Board shall establish a date for a public in the following manner:

- A. The Board of Adjustment shall, within thirty (30) days of receipt of the application, establish a hearing date.
- B. The applicant and abutters must be notified of the public hearing by certified mail, return receipt requested, mailed at least ten (10) days prior to the public hearing. Said notice shall include the date and time of the hearing as well as a general description of the proposal.
- C. Notice to the general public shall also be given at the same time by posting said notice in the Office of the Board of Selectmen, the Town Clerk Office, and the Planning and Zoning Office.
- D. Notice shall be placed in a newspaper circulated in the Town of Milford at least one (1) week prior to the hearing date.

10.012 Every variance granted by the Board of Adjustment shall be based upon and accompanied by a specific finding or findings that:

- A. There are special circumstances or conditions applying to the land or structure for which the variance is sought (such as, but not limited to, the exceptional narrowness, shallowness, or shape of the property in question, or exceptional topographical conditions), which are peculiar to such land or structure, and the application of the requirements of this Ordinance will deprive an owner of such property a reasonable use of it, and will impose upon such owner a hardship not shared by the owners of other property in the same district.
- B. The specific variance as granted is the minimum variance that will grant reasonable relief to the owner and is necessary for a reasonable use of the land or structure.
- C. The granting of the variance will be in harmony with the general purposes and intent of this Ordinance, and with the convenience, welfare and character of the district within which it is proposed, and will not be injurious or otherwise detrimental to the public welfare.

10.020 SPECIAL EXCEPTIONS

10.021 The Board of Adjustment may in appropriate cases and subject to appropriate conditions and safeguards as determined by the board, grant permits for such special exceptions as allowed in the various zoning districts as set forth in Article II. The Board may refer all applications for special exceptions to the Planning Board for its review and recommendations prior to holding public hearing on the application. The Board of Adjustment, in acting on an application for a special exception shall take into consideration the following conditions: (1992)

- A. The proposed use shall be similar to those permitted in the district.
- B. The specific site is an appropriate location for the proposed use.
- C. The use as developed will not adversely affect the adjacent area.
- D. There will be no nuisance or serious hazard to vehicles or pedestrians.
- E. Adequate appropriate facilities will be provided for the proper operation of the proposed use.

10.022 The Board of Adjustment shall act upon an application for a special exception in the same manner as prescribed in Section 10.011 of this article.

10.023 HOME OCCUPATIONS

- A. In all cases involving home occupations, the Board of Adjustment in addition to the criteria contained herein shall consider the following requirements:
1. The person conducting the home occupation shall reside in the dwelling unit, and there shall be no more than one (1) non-resident person employed in connection with such occupation.
 2. There shall be no evidence outside the dwelling, except permitted signs and required off-street parking, that the dwelling contains a home occupation.
 3. The home occupation shall be confined to one (1) floor of the dwelling unit or accessory buildings and not more than twenty-five (25) percent of such floor shall be so used.
 4. No finished consumer goods shall be acquired outside the dwelling unit for sale in connection with a home occupation within the dwelling unit.
 5. The home occupation and the conduct thereof shall not impair the residential character of the premises nor impair the reasonable use, enjoyment and value of other residential property in the neighborhood.
- B. Any special exceptions issued hereunder shall automatically terminate when the applicant no longer resides in the dwelling unit.

10.024 SELF-SERVICE STORAGE FACILITIES (1997)

- A. In all cases involving self-service storage facilities in the residence "R" District, the following shall be minimum performance conditions of approval, in addition to any other conditions the Board of Adjustment may require:
1. The self-storage facility shall be located specifically on, and have frontage on, Rte. 13 North, Rte. 13 South, and/or the following parcels of land on North River Road: Map 8, lots 11, 11-1, 19, 48, 49, 50, 51, 53 and 53-5.
 2. In order to screen facilities and insure their compatibility with surrounding land uses, there shall be a minimum fifteen (15) feet perimeter landscaped buffer along all sides of the parcel. This buffer shall be planted and maintained with evergreen trees, minimum six (6) feet in height, at intervals fifteen (15) feet on-center, alternately staggered along the length of the buffers. The type of evergreen tree shall be subject to the approval of the Planning Board.
 3. If the Board of Adjustment determines that existing landscaping and/or topographic conditions already create an effective perimeter screen, the Board of Adjustment may waive all or a part of the evergreen tree screening requirement.
 4. There shall be no outside storage.
 5. The use shall require site plan approval by the Planning Board.
 6. Each structure shall be set back at least fifty (50) feet from the front lot line.

10.025 MANUFACTURING IN THE "C" - COMMERCIAL DISTRICT

- A. In all cases involving manufacturing in the "C" - Commercial District, the following shall be minimum performance standards for approval by the Zoning Board of Adjustment:

1. The specific site of the proposed manufacturing use will be located in an existing building that is an appropriate location for the proposed use;
2. The use as proposed will not adversely affect the adjacent areas;
3. There will be no nuisance from noise, odor, hours of operation, traffic, deliveries and lighting;
4. There will be no outside storage;
5. The use shall require site plan approval by the Planning Board, subsequent to Zoning Board approval.

10.030 APPEALS TO THE BOARD

- Appeals from the decision of the Board of Selectmen or their designated official may be made to the Board of Adjustment by any person aggrieved or by any officer, department or board of the municipality affected by any decision of the Board of Selectmen or their designated official. Such appeal shall be taken within a reasonable time by filing with the Board of Adjustment a notice of appeal, specifying the grounds of the appeal. All papers constituting the record upon which the action appealed from was taken shall be forthwith transmitted to the Board of Adjustment. The Board of Adjustment shall determine within ten (10) days of receipt of the notice of appeal whether a rehearing shall be granted or denied. Should such a hearing be granted, the Board shall give public notice in the manner prescribed in Section 10.011 of this article.

10.040 APPEAL FROM ORDER OF THE BOARD OF ADJUSTMENT

10.041 Within thirty (30) days after an order or decision handed down by the Board of Adjustment, any party to the action or proceeding of the Board of Adjustment, or any person directly affected thereby may move for a rehearing and thereafter, if necessary, appeal therefrom by petition to the Superior Court in accordance with the provisions of the laws of the State of New Hampshire and may pursue such remedies as are therein provided.

10.042 A fee consisting of the cost of advertising and of mailing notices of hearing shall be payable by the person making the appeal at time of filing.

10.050 PLANNING BOARD REVIEW NECESSARY

Whenever a variance or special exception is required for a use or structure which must also receive non-residential site plan review by the Planning Board such required variance or special exception must be received from the Board of Adjustment prior to final Planning Board approval of the non-residential site plan review.

10.060 EXPIRATION

If within one (1) year after the granting of a variance or special exception by the Board of Adjustment, any required building permit for work covered by the variance or special exception has not been executed, then such variance or special exception shall become null and void except in any case where legal proceedings relative to the variance or special exception shall have caused an undue delay in the execution of the required building permit.

ARTICLE XI IMPACT FEES (2003)

11.010 GENERAL

11.011 AUTHORITY

This ordinance is established pursuant to The State of New Hampshire RSA 674:21 (V). All references in this ordinance will refer to State of New Hampshire RSAs.

11.012 INTENT

This ordinance is intended to:

Implement and be consistent with the Town of Milford's Master Plan; and

Allocate a fair and equitable share of the cost of public capital facilities (including school construction) to new development (exclusive of existing impact fee regulations that relate to sewer and water facilities enacted pursuant to RSA 38 and RSA 149-I, currently in place); and

Require that new development contribute its proportionate share of funds necessary to accommodate its impact on public facilities; and

Apply to all forms of development identified in RSA 674:21 (V), other than the sewer and water facilities identified above.

11.013 FINDINGS

The Town of Milford is responsible for and committed to the provision of public facilities and services at levels necessary to support residential and non-residential growth and development.

Such facilities and services have been and will be provided by the Town utilizing funds allocated via the Capital Improvements Program as regularly updated pursuant to RSA 674:5.

The rate of growth experienced by the Town in recent years and projected growth rates, have and will continue to necessitate an expenditure of public funds in order to provide adequate facility standards.

New development may create a need for the construction, equipping or expanding of public capital facilities.

The imposition of impact fees is one of the available methods of ensuring that public expenditures are not excessive, and that new development bears a proportionate share of the cost of public capital facilities necessary to accommodate such development. This must be done in order to promote and ensure the public health, safety and welfare.

The fees established by the Impact Fee Schedules for the categories identified in Section 11.031 are derived from, based upon, and shall not exceed the costs of:

Providing additional public capital facilities necessitated by the new development for which the fees are levied; or

Compensating the Town of Milford for expenditures made for existing public facilities that were constructed in anticipation of new growth and development.

11.014 DEFINITIONS

The following definitions shall apply to ARTICLE XI - Impact Fees.

Accessory Structure -Non-Residential. A structure on the same lot with, and of a nature incidental and subordinate to, the principal structure.

Applicant. A person or agent applying for the issuance of a building permit, permit for manufactured home installation, subdivision, site plan or other local land use decision, permit or approval.

Dwelling Unit. One room or rooms connected together, constituting a separate, independent housekeeping establishment physically separated from any other dwelling units in the same structure, and containing independent cooking and sleeping facilities.

New Development. Any activity that results in:

- o The creation of a new dwelling unit or dwelling units;
- o The conversion of a non-residential use to a dwelling unit or dwelling units;
- o Construction of new non-residential facilities and/or accessory structures;
- o The conversion of a residential use to non-residential use.

New Development does not include:

The reconstruction of a residential or non-residential structure that has been destroyed by fire or natural disaster, provided there is no change in the number of dwelling units or size of the structure;

The replacement of a manufactured home with another manufactured home provided there is no change in the number of dwelling units or size of the structure.

Public Capital Facilities. Facilities and equipment which are owned and operated by the Town of Milford, the Milford School System, or cooperatively with other municipalities and which have a useful life of no less than five years. Public capital facilities do not include the costs associated with the operation, maintenance or repair of such facilities, or with facility replacements that do not increase the capacity or level of service, but do include reasonable costs for planning, engineering, design, land acquisition, and other reasonable costs associated with such facilities.

Total Non-Residential Area. The total area of a non-residential structure shall equal the sum of the gross horizontal area of each floor and mezzanine. Any non-residential structure with an area of one hundred twenty (120) square feet or less is excluded.

Total Residential Area. The total residential area of a residential structure shall be equal to the sum of the gross horizontal area of each floor, including attached decks, porches, breezeways, sun rooms, balconies and attached garages. Total residential area excludes basements, cellars and detached outbuildings.

11.020 OFF-SITE IMPROVEMENT

An improvement that is required by the Planning Board for either a site plan or subdivision that is necessary, in the judgment of the Planning Board, for the project to operate properly on the day that it opens shall be considered to be an Off-Site Improvement. Off site improvements for site specific applications shall be assessed on a case by case basis and shall be in addition to other impact fees imposed pursuant to this ordinance. In a case in which it is determined that such an improvement is necessary for the proper operation of the project, the Planning Board shall so notify the applicant. The applicant shall be required to present to the Board a study that identifies the proportionate share of the cost of the required improvement. The Planning Board may, at the expense of the applicant, refer such study to a consultant of its own choosing to determine the reliability of the findings that shall be considered by the board to arrive at an amount to be paid by the applicant for the off site improvement. The applicant shall be assessed his/her proportionate share of the cost of the project. In cases where it is determined that an improvement is necessary for the proper functioning of a site plan or subdivision, but the applicant, for whatever reason is determined to contribute more than his/her proportionate share to the improvement under this section, and, therefore, that the improvement will also accommodate other future development, the Planning Board, at the request and expense of the applicant, may establish a separate, project related impact fee that assesses other future site plans or subdivisions for their proportionate share of the

improvement to reimburse the applicant for such disproportionate contribution. Such future impact fees shall provide for the payment to the original applicant, with any interest.

11.030 IMPOSITION OF IMPACT FEES FOR NEW DEVELOPMENT

Any person or agent, who after the effective date of this ordinance, seeks to undertake new development within the Town of Milford, New Hampshire, by applying for a building permit and who is not vested under RSA 674:39, is hereby required to pay the appropriate impact fee in the manner set forth in this Ordinance, in accordance with any Impact Fee Schedule adopted by the Board of Selectmen.

No new building permit for an activity requiring payment of one or more impact fee(s) pursuant to this Ordinance shall be issued unless and until the impact fee(s) hereby required have been assessed and agreed upon.

11.031 COMPUTATION OF IMPACT FEES

a. Amount of Impact Fees and Type of Facilities:

The amounts of the impact fees shall be determined using the values contained in the Impact Fee Schedules for the following types of facilities:

- * storm water, drainage and flood control facilities
- * public road systems and rights-of-way
- * municipal office facilities
- * public school facilities
- * the municipality's proportional share of capital facilities of a cooperative or regional governmental venture
- * public safety facilities
- * public health facilities
- * solid waste collection, transfer, recycling, processing and disposal facilities
- * public library facilities
- * public recreational facilities not including public open space.

Sewer and water facilities are excluded from this list because the impacts on these facilities, as well as the fees relating to same, are addressed elsewhere in regulations arising out of RSA 38 and RSA 149-I.

b. Impact Fees Schedules shall be established and reviewed as set forth in Section 11.060 below.

In the case of change of use, redevelopment expansion or modification of an existing use that constitutes New Development, the impact fees shall be based upon the net increase of the total residential area or total nonresidential area of the redevelopment, expansion or modification

c. Assessment and Payment of Fees. All impact fees imposed pursuant to this ordinance shall be assessed prior to, or as a condition for, the issuance of a building permit or other appropriate permission to proceed with development. Impact fees shall be collected as a condition for the issuance of a certificate of occupancy.

d. Appeals. If an applicant elects to dispute the amount of the impact fee(s), the applicant may prepare and submit to the Planning Board an independent fee calculation study for the new development activity that is proposed. The Planning Board shall review such study and render a decision within sixty (60) days of the receipt of the independent fee calculation.

All cost(s) incurred by the Town for the review of such study shall be paid by the applicant.

The decision of the Planning Board regarding any disputed fee calculations may be appealed to the Superior Court as provided by RSA 677.15.

11.032 ADMINISTRATION AND CUSTODY OF FUNDS COLLECTED

Any impact fee collected shall be properly identified and promptly deposited in the appropriate Impact Fee accounts and used solely for the purpose for which it was collected. Impact fee accounts shall be special revenue fund accounts and under no circumstances will impact fee revenues accrue to the General Fund. Each fee collected under a specific Impact Fee Schedule shall not be commingled with any other impact fee accounts or any other funds.

The Town Treasurer shall have custody of all accounts and shall pay out the same only upon written orders of the Board of Selectmen.

At the end of each fiscal year, the Town Treasurer shall prepare a report, showing a full account of all impact fee transactions during the year and deliver same to the Board of Selectmen, the Planning Board, and shall make the report available to the Public.

11.033 REFUND OF FEES PAID

A refund shall be owed only when the Town has failed, within the period six (6) years from the payment of a fee, to expend or encumber a fee for public capital facilities intended to benefit the development that had paid the fees.

The Board of Selectmen shall notify the owner of record by certified mail, return receipt requested, that a refund is due.

The current owner of property on which impact fees have been paid may apply for a full or partial refund of such fees, together with any accrued interest.

In the event that the owner elects to apply for a refund, such application shall be submitted in writing to the Board of Selectmen within sixty (60) days from the date of receiving notice from the Board of Selectmen. Payment of a refund will be made within sixty (60) days after receiving the written request for a refund from the current owner of record.

11.034 CREDITS IN EXCHANGE FOR PUBLIC CAPITAL FACILITIES

The Board of Selectmen may grant a credit to an impact fee in exchange for public capital improvements. Said public capital improvements may be offered by the applicant as total or partial payment of the required impact fee. Such credit shall be determined to represent an identifiable dollar value computed in a manner acceptable to the Planning Board. The Board of Selectmen shall act on a request for credit only after receipt of a recommendation on the request provided by the Planning Board.

Any claim by the applicant for credit must be made prior to the Planning Board vote on subdivision or site plan approval.

Credits shall not be transferable, and apply only to a specific subdivision or site plan approval.

Credits shall not be transferable from one impact fee to any other impact fee.

Any decision by the Board of Selectmen pursuant to the credit provision of this section may be appealed to the Superior Court in accordance with RSA 677:15.

Under no circumstances shall this section imply that the Board of Selectmen has an obligation to accept any credit offer that is proposed.

11.040 ADDITIONAL ASSESSMENTS

Payment of an impact fee does not restrict the Town or the Planning Board from requiring other payments from the applicant, including without limitation such payments relating to the cost of the extensions of water and sewer mains or the construction or improvement of roads or streets or other infrastructure and facilities specifically

benefiting the development which are required by the subdivision or site plan review regulations or as otherwise permitted by law.

11.050 PREMATURE AND SCATTERED DEVELOPMENT

Nothing in this Ordinance shall be construed so as to limit the existing authority of the Milford Planning Board to provide against development which is scattered or premature, which requires an excessive expenditure of public funds, or otherwise violates the Town of Milford's Site Plan Review Regulations, Subdivision Regulations, or Zoning Ordinance.

11.060 ESTABLISHMENT, CALCULATION, REVIEW AND TERMINATION OF IMPACT FEES

11.061 ESTABLISHMENT OF IMPACT FEES

In order to establish an impact fee, the Capital Improvements Plan Citizens Advisory Committee as established by the Planning Board shall identify and recommend to the Planning Board projects eligible for impact fee funding. If such recommendations are accepted, the Planning Board will then prepare an Impact Fee Schedule in accordance with RSA 674:21 and this Ordinance.

The Planning Board shall conduct a public hearing on the proposed Schedule, and shall consider all comments received prior to finalizing the Schedule. The Planning Board, upon such finalization, shall then submit the Schedule to the Board of Selectmen for its consideration. The Board of Selectmen at a regular meeting shall either accept or reject the proposed Schedule. The Impact Fee Schedule shall become effective when a majority of the Board of Selectmen approves the schedule. Should the Board of Selectmen fail to approve the schedule, it shall state its reason(s) for doing so in writing and shall forward these comments to the Planning Board within 60 days of the receipt of the Impact Fee Schedule. The Planning Board may reconsider the adoption of such a Schedule.

11.062 IMPACT FEE SCHEDULE CALCULATION

The Impact Fee Schedule shall be prepared in accordance with RSA 674:21 and based upon the most recent data available. The Impact Fee Schedule shall be calculated using the following factors:

The size of the capital facility;

An estimate of the proportion of users from future Milford commercial, industrial or residential development subject to the impact fee that will use the facility when it has reached its capacity;

Projections of future users based upon new building permit projections;

Estimates of the cost to the Town of Milford for the proposed facility, including financing and excluding non-municipal funding sources;

Credits for property taxes to be paid by the proportion of the project to be financed by impact fees;

A fee assessed for new development based upon the total residential area or total non-residential area;

A determination of the number of building permits that will need to be issued in order to finance the impact fee;

An accounting of the number of permits issued, with a maximum number of permits to be assessed an impact fee prior to the fee's termination;

Exemptions, if any;

Impact fee schedules will be available in the Department of Planning and Community Development and the Building Department.

11.063 REVIEW OF IMPACT FEES

The Planning Board shall review all established Impact Fee Schedules on an annual basis.

The Planning Board shall modify the Impact Fee Schedule if it finds that new data is available that may change the schedule. This may include the replacement of factors used in the Impact Fee Schedule with more accurate or recent projections, data and figures. The Planning Board shall submit the Impact Fee Schedule to the Board of Selectmen if modifications are recommended. The Board of Selectmen shall vote to affirm or deny the modifications within sixty (60) days of the receipt of recommendations from the Planning Board. If the Board of Selectmen fails to affirm the modifications, the impact fee schedule in effect shall remain in place.

11.064 TERMINATION OF IMPACT FEES

Impact fees shall terminate in accordance with the Impact Fee Schedule, which shall set forth the number of building permits to be issued prior to its expiration.

The Board of Selectmen may terminate a specific impact fee schedule in effect by majority vote. This may be done only after soliciting recommendations from the Planning Board, and after conducting a public hearing. The Planning Board shall be given sixty (60) days notice prior to any such vote to provide written recommendations to the Board of Selectmen.

11.070 SEVERABILITY

If any section, phrase, sentence or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

11.080 EFFECTIVE DATE

This ordinance shall become effective on the date of its passage, subject to the limitations imposed by RSA 676:12.